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TRANSCRIPT OF RECORD

[redacted]

OCTOBER TERM, 1940.

No. 641

[redacted]

vs.

PRESS PUBLISHING COMPANY.

[redacted]

FILED MAY 9, 1941.

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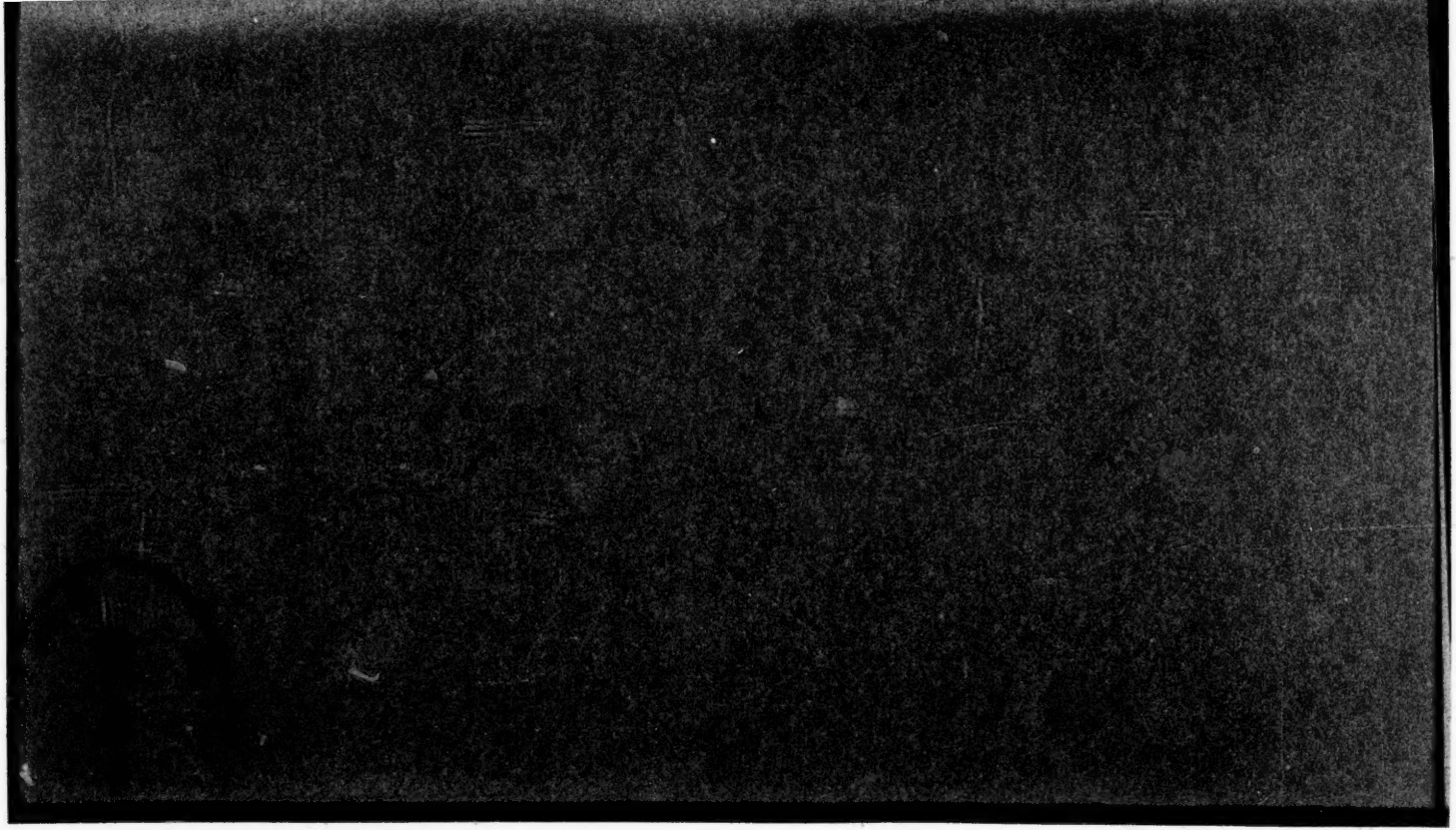

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 541.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

PRESS PUBLISHING COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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52706—10——1

1 The President of the United States of America to the honorable judges of the Circuit Court of the United States for the Southern District of New York in the Second Circuit, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of the United States for the Second Circuit in the Southern District of New York before you or some of you between the United States of America and the Press Publishing Company, a manifest error hath happened to the great damage of the said the United States of America as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof. That the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

2 Witness the Hon. Melville W. Fuller, Chief Justice of the United States, the twenty-fifth day of February, in the year of our Lord one thousand nine hundred and ten.

[SEAL.] JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States for the Southern District of New York in the Second Circuit.

Allowed:

C. M. HOUGH,
U. S. Dist. Judge for the Second Circuit.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the Circuit Court of the United States of America for the Southern District of New York in the Second Circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from 4 to 74, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of the United States of America, plaintiff in error, against the Press Publishing Company, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this sixth day of May, in the year of our Lord one thousand nine hundred and ten, and of the independence of the United States the one hundred and thirty-fourth.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

3 (Indorsed:) (Original.) Form No. 336. U. S. Circuit Court, Southern District of New York. United States versus Press Publishing Company. Writ of error. Henry A. Wise, United States attorney, attorney for U. S. Due service of a copy of the within is hereby admitted. New York, Feby. 25th, 1910. U. S. Circuit Court, Southern District, N. Y. Filed Feb. 25, 1910. John A. Shields, clerk.

A copy of the within has this day been received, Feb. 25, 1910.

NICOLL, ANABLE, LINDSAY & FULLER,
Attorneys for Def.

4 *Indictment.*

In the Circuit Court of the United States of America for the Southern District of New York, of the January term, in the year nineteen hundred and nine.

Southern District of New York, ss:

The grand jurors for the United States of America, impaneled and sworn in the Circuit Court of the United States for the Southern District of New York, and inquiring for that district, upon their oath present, that during the period of time from the fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, Theodore Roosevelt has been President of the United States, while Douglas Robinson was and is a brother-in-law of the said Theodore Roosevelt; that William Howard Taft from the first day of February, in the year nineteen hundred and four, until the thirtieth day of June, in the year nineteen hundred and eight, was Secretary of War of the United States, and at the several times of the committing, by the defendant hereinafter named, of the several offenses in this indictment hereafter mentioned, was the Republican candidate and nominee for the office of President of the United States, and Charles P. Taft was a brother of the said William Howard Taft; that William Nelson Cromwell, during all of the said period of time from the said fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, has been and is an attorney and counsellor at law, residing and practising his profession in the city of New York, in the State of New York, and has had for one of his clients the Compagnie Nouvelle du Canal de Panama, hereinafter mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in the year eighteen hundred and eighty-eight the Compagnie Universelle du Canal Interoceanique de Panama, a corporation (sometimes referred to as the De Lesseps Canal Company and sometimes as the Old Panama Canal Company) organized under the laws of France, which had acquired certain concessions from the Republic of Columbia to construct a maritime canal across the Isthmus of Panama, had commenced to construct such canal, but had

failed to complete the same, became insolvent, and its affairs were placed in the hands of a receiver (in France called a liquidator) pursuant to proceedings to that end in the French courts; that thereafter, in the year eighteen hundred and ninety-four, the property, rights, franchises, and concessions of the said corporation were disposed of by the said liquidator to the Compagnie Nouvelle du Canal de Panama, a joint stock company, organized under the laws of France and sometimes called the New Panama Canal Company, which company carried forward the work of constructing the said canal, but not to completion; that after that, and in the year eighteen hundred and ninety-nine, the President of the United States was authorized by law to make an investigation of the Isthmus of Panama with a view to the construction of a canal across the same by the United States, to investigate the available routes for such canal, particularly the Nicaraguan and the Panama routes, with a view to determining what was the most practicable route, to ascertain what rights and franchises were already held by others in that connection, and what work had been done, and generally to investigate fully so as to determine the most feasible and practicable route for a canal across the said Isthmus and the cost of constructing the same by the United States, and report the result of his investigation to Congress with his recommendations; that thereafter, in the year nineteen hundred and two, the President of the United States was, by the act of Congress approved June twenty-eight, in that year, "authorized to acquire, for and on behalf of the United States, at a cost not exceeding forty millions of dollars, the rights, privileges, franchises, concessions, grants of land, right of way, unfinished work, plants and other property, real, personal, and mixed, of every name and nature, owned by the New Panama Canal Company, of France, on the Isthmus of Panama, and all its maps, plans, drawings, records on the Isthmus of Panama and in Paris, including all the capital stock, not less, however, than sixty-eight thousand eight hundred and sixty-three shares of the Panama Railroad Company, owned by or held for the use of the said canal company, provided a satisfactory title to all of the said property" could be obtained; and that the said property and proprietary rights were, in fact, thereafter, to wit, in the year nineteen hundred and four, acquired and purchased by the United States for the sum of $40,000,000.00.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the said period of time first above mentioned there has existed a certain tract of land, consisting of a large number of acres, to wit, two thousand acres, in the county of Orange and in the said State and Southern District of New York, purchased and accepted by the Congress of the United States by the consent of the legislature of the said State of New York, and used by the United States as a fort and military post and reservation, under the name of West Point, over which said tract exclusive jurisdiction was, long before the said period and subsequent to such purchase, ceded by the State of New York to, and ever since such

cession has been exercised by, the United States, together with exclusive legislation in all cases whatsoever.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the said period of time, to wit, on the third day of October, in the year nineteen hundred and eight, at and within the said fort and military post and reservation of West Point, and in the said State and Southern District of New York, the Press Publishing Company, a corporation theretofore organized and then existing and doing business under and by virtue of the laws of the said State of New York, contriving and unlawfully, wickedly and maliciously intending to injure, vilify and prejudice the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, and each of them, to deprive each of them of his good name, fame, credit, and reputation, expose him to hatred, contempt, ridicule, and obloquy, bring him into great scandal, infamy, and disgrace, to excite, induce, tempt, and cause them, respectively, to commit breaches of the peace, and otherwise to stir up disorder among the people, unlawfully did falsely, wickedly, knowingly, maliciously, and scandalously compose, write, print, and publish, in a certain newspaper, to wit, a newspaper called The World, then owned and published by it, the said Press Publishing Company, and by it, the said Press Publishing Company, circulated throughout the United States and the said Southern District of New York, and particularly in the said fort and military post and reservation of West Point, that is to say, in the issue of that newspaper for the day in this count of this indictment last above mentioned, a certain false, scandalous, malicious, and defamatory libel in the form of a newspaper article then and there containing divers false, scandalous, malicious, and defamatory matters in print of and concerning the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, and of and concerning the said matter of the acquisition and purchase, in the year nineteen hundred and four, by the Government of the United States, for the sum of $40,000,000.00 from the said Compagnie Nouvelle du Canal de Panama, of its said property and proprietary rights at the Isthmus of Panama, preliminary to the construction by the Government of the United States of the Panama Canal across that Isthmus; which said newspaper article (excepting three portraits, which can not be here reproduced) and libel, and false, scandalous, malicious, and defamatory matters in print, then and there were, and are, of the tenor which here follows, that is to say:

Men who figure in rumors about great Panama Canal deal.

[Portrait: Charles P. Taft. Portrait: Douglas Robinson. Portrait: William Nelson Cromwell.]

William N. Cromwell says man seeks to blackmail him—Through law partner he complains to district attorney of attempted hold up in connection with alleged deal by which syndicate he headed reaped

$36,500,000 profit in sale of Panama Canal to the United States—Cromwell brands story of deal as a "fake"—Candidate Taft's brother and Douglas Robinson, President Roosevelt's brother-in-law, alleged to have been in syndicate—Col. Alexander S. Bacon says he investigated the deal, but never took a dishonest dollar.

District Attorney Jerome is investigating a matter placed before him by W. J. Curtis, of the firm of Sullivan & Cromwell, of which William Nelson Cromwell is one of the partners. Mr. Curtis visited the office of the district attorney on Thursday and represented that there were men whom he named that were endeavoring to obtain money from Mr. Cromwell because of his interest in the transactions leading up to the purchase by this country of the Panama Canal.

In brief, Mr. Curtis told Mr. Jerome it had been represented to Mr. Cromwell that the Democratic national committee was considering the advisability of making public a statement that William Nelson Cromwell, in connection with Mr. Bunau-Varilla, a French speculator, had formed a syndicate at the time when it was quite evident that the United States would take over the rights of the French bondholders in the De Lesseps Canal, and that this syndicate included among others Charles P. Taft, brother of William H. Taft, and Douglas Robinson, brother-in-law of President Roosevelt. Other men more prominent in the New York world of finance were also mentioned.

Story Curtis told Jerome.

According to the story unfolded by Mr. Curtis, it was said that the men making this charge against Mr. Cromwell had averred that the syndicate thus organized in connection with Bunau-Varilla had gone into the French market and purchased for about $3,500,000 the stock and bonds of the defunct De Lesseps Company and of the newer concern which had taken over the old company and had for a time prosecuted work on the canal.

These financiers invested their money because of a full knowledge of the intention of the Government to acquire the French property at a price of about $40,000,000 and thus, because of their alleged information from high government sources, were enabled to reap a rich profit.

It was further stated that the story as told against Mr. Cromwell fixed the profit of the syndicate at $36,000,000, this amount being divided among government favorites in the world of politics and finance.

Truth of rumors not established.

It is only fair to Mr. Cromwell to say that the report of the Panama operations implicating him in this gigantic transaction has been public property in the newspaper offices of New York almost since the date of the transaction, four years ago, and it is also fair to say that the investigations have not established the truth of the far-reach-

ing rumors. A represenative of Mr. Cromwell's office last night stated that it was true a complaint had been made to District Attorney Jerome for the reason that Mr. Cromwell feared an attempt was being made to blackmail him, as a certain man had come to him and represented that the Democratic national committee would make public this scandalous statement, and that he told Mr. Cromwell his personal influence would stop any publication from any source, whereupon the lawyer, who is the close friend and adviser of Mr. Taft, concluded that it was an attempt to hold him up.

Mr. Cromwell's agent last night said that the Panama story was an open book, that it was true that $40,000,000 was appropriated by the United States Government to take over the holdings of the old French companies, that this amount was sent to France through the firm of J. P. Morgan & Co., who were paid $36,000 for transfer fees, that the entire amount was paid into the French courts, and the individual holders of bonds were from time to time paid off as their claims were proved.

Denies there was a syndicate.

Mr. Cromwell's agent said most emphatically there had been no syndicate of any kind at any time formed for the purpose of handling the Panama bonds, and that the acquisition of the bonds
6 through this Government was through regular channels and through no intermediate holding company. At the Democratic national headquarters it was stated that an effort had been made to interest them in this Panama story, and that for several days some ends of it had been under investigation.

It was denied emphatically that any publication had ever been thought of in connection with the matter, as the investigation had been only casual, just as scores of other similar charges were examined when presented by seemingly responsible people.

Col. Bacon treats it as joke.

Col. Alexander S. Bacon, who is said to have studied the Panama situation, treated the complaint to Mr. Jerome as something of a joke. "I have not seen William Nelson Cromwell for two years," he declared. "I have had no communication with him. I have never taken a dishonest dollar in my life. I know of no complaint against me at the district attorney's office, and I'll be there to answer it when I am notified.

"The fact of the matter, so far as I may disclose at present, is as follows: I tried to expose this syndicate as far back as 1904, when the United States bought the canal. I knew then that there was a syndicate of American capitalists which had bought this property from the French company, but I did not know the names of the men in this syndicate. I made a trip to France to find out, but did not get the information.

Knows men in syndicate.

"Eight days ago I returned from a second trip to France on the same errand, and now I know the names in this syndicate. When you ask me whether Charles P. Taft and Douglas Robinson are among those names I must beg to be excused. The whole thing will come out shortly.

"Mr. Cromwell knows what the Republican national committee knows. If there is any complaint before the district attorney of New York, it looks to me like an attempt to balk me.

"I have heard of no 'complaint,' and I have never heard of any person named Illington, who is supposed to be associated with me in the present alleged complaint.

"I was sent over to France this last time to investigate the canal purchase by certain prominent persons, whom I cannot indicate at this moment. The Democratic national committee knows all about it; so does the Republican national committee.

"If any one charges that I have tried to blackmail him, he lies. Once before a man was sent to France to find the truth of this Panama syndicate, and he was bought off. I can not be bought off."

Cromwell denounces story.

Late last night Mr. Cromwell made the following statement to the World:

"We may expect during a heated political contest all kinds of stories, which are not worthy of notice, but this one I wish to denounce in the strongest terms as a lying fabrication, without a shadow of truth in it. Neither I nor anyone allied with me, either directly or indirectly, at any time or in any place in America or abroad, ever bought, sold, dealt in, or ever made a penny of profit out of any stocks, bonds, or other securities of either the Old Panama Canal Company or the New Panama Canal Company, or ever received for the same a single dollar of the forty millions paid by the United States. I make this the most sweeping statement that language can convey.

"As everybody connected with the affair knows, I abstained from receiving the forty millions in my own hands at Washington or New York as the general counsel for the company, and myself arranged for the payment of the entire forty millions direct from the Treasury of the United States through the bankers of the Government into the Bank of France at Paris to the credit of the liquidators of the two companies. There it remained subject to the order of the liquidators until distributed by them to the hundreds of thousands of beneficiaries, and not one dollar of it ever came to me or any one in any wise connected with me. Of course I do not refer to our regular compensation as counsel. I suppose it will be years before the beneficiaries will all be identified and the distribution completely made.

"Another evidence of fake."

"The mention of the names of Mr. Taft and Mr. Douglas Robinson is another evidence that this is a fake story. No member of the Taft family or Mr. Douglas Robinson ever had the remotest connection with Panama Canal matters, directly or indirectly, and I never saw one of them on this subject before the United States acquired the canal. I never saw Mr. Douglas Robinson in my life. The names of Caesar and Napoleon might as well have been used, for it could not be more impossible. All this, except the dragging in of new names, was threshed out before the United States Senate committee by the late Senator Morgan. Out of respect for the dead, I refrain from comment upon that proceeding, but I feel warranted in saying that it was pursued with unparalleled energy and skill. It was, however, completely exploded and refuted by the facts in the case, and ended in complete discomfiture. There is not a word of truth in it, and I would not notice it at this time if it did not concern others."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said publication of the said false, scandalous, malicious, and defamatory libel then and there, to wit, on the said third day of October, in the year nineteen hundred and eight, at and within the said fort and military post and reservation, and in the said State and Southern District of New York, was accomplished by the said Press Publishing Company knowingly delivering and causing to be delivered, for perusal by persons residing at the said military post and reservation, a large number of copies, to wit, twenty-nine copies, of the said newspapers, so then and there containing the said false, scandalous, malicious, and defamatory newspaper article and libel, at a certain store there situate, to wit, the post exchange, a mercantile concern then and there dealing, amongst other things, in current newspapers, it, the said Press Publishing Company, then and there, well knowing all the premises aforesaid, and well knowing the said false, scandalous, malicious, and defamatory newspaper article and libel to be, as it then and there was, so printed in each of the said copies of the said newspaper, and well knowing the same to be, as it then and there was, and is, false.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Press Publishing Company
7 then and there, to wit, at the time and place of so composing, writing, printing, and publishing the said false, scandalous, malicious, and defamatory libel as aforesaid, in and by the same did mean and intend to charge, and the same taken as a whole then and there did, and does, mean and charge, and convey to the reader thereof the idea, particularly that the said Theodore Roosevelt, in violation of his lawful duty as President of the United States, and the said William Howard Taft, in violation of his lawful duty as Secretary of War and as Cabinet adviser of the President, had,

before the event, and before it was known to the public, dishonestly, fraudulently, corruptly, and criminally disclosed to other and unofficial persons, to wit, the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, in order that those persons might make use of the same for their own personal ends and profit, and that those persons had in fact dishonestly, fraudulently, corruptly, and criminally accepted and made use of the same for their own personal ends and profit, to wit, a profit amounting to the sum of $36,500,000.00, the information that the Government of the United States was about to acquire and purchase the said property and proprietary rights of the said New Panama Canal Company—and, generally, that the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, as principals and as accessories, had engaged in, and were suspected of having engaged in, unlawful, dishonest, fraudulent, and criminal practices in the nature of conspiracy to defraud the United States and others, bribery of and by United States officers and Members of Congress and of officers of foreign governments, interference with the affairs of foreign governments, and breaches of official and professional trust, in connection with the said acquisition and purchase of the said property and proprietary rights, whereby they secured for themselves without right enormous sums of money from the Treasury of the United States.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Press Publishing Company, in manner and form and at the time aforesaid, and in a place which had been ceded to and was, and is, under the jurisdiction of the United States, unlawfully did commit the offense of falsely, wickedly, knowingly, maliciously, and scandalously composing, writing, printing, and publishing a criminal libel upon the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, to their great damage, scandal, infamy, and disgrace, to the evil example of all others in like case offending, and against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

SECOND COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period of time from the fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, Theodore Roosevelt has been President of the United States, while Douglas Robinson was and is a brother-in-law of the said Theodore Roosevelt; that William Howard Taft from the first day of February, in the year nineteen hundred and four, until the thirtieth day of June, in the year nineteen hundred and eight, was Secretary of War of the United States, and at the time of the committing, by the defendant in this count of this indictment hereafter named, of the offense in this count

mentioned, was the Republican candidate and nominee for the office of President of the United States, and Charles P. Taft was a brother of the said William Howard Taft; that William Nelson Cromwell, during all of the said period of time from the said fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, has been and is an attorney and counsellor at law residing and practising his profession in the city of New York, in the State of New York, and has had for one of his clients the Compagnie Nouvelle du Canal de Panama in this count of this indictment hereafter mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in the year eighteen hundred and eighty-eight, the Compagnie Universelle du Canal Interoceanique de Panama, a corporation (sometimes referred to as the De Lesseps Canal Company and sometimes as the Old Panama Canal Company) organized under the laws of France, which had acquired certain concessions from the Republic of Colombia to construct a maritime canal across the Isthmus of Panama, had commenced to construct such canal, but had failed to complete the same, became insolvent, and its affairs were placed in the hands of a receiver (in France called a liquidator), pursuant to proceedings to that end in the French courts; that thereafter, in the year eighteen hundred and ninety-four, the property, rights, franchises, and concessions of the said corporation were disposed of by the said liquidator to the Compagnie Nouvelle du Canal de Panama, a joint-stock company organized under the laws of France and sometimes called the New Panama Canal Company, which company carried forward the work of constructing the said canal, but not to completion; that after that, and in the year eighteen hundred and ninety-nine, the President of the United States was authorized by law to make an investigation of the Isthmus of Panama with a view to the construction of a canal across the same by the United States, to investigate the available routes for such canal, particularly the Nicaraguan and the Panama routes, with a view to determining what was the most practicable route, to ascertain what rights and franchises were already held by others in that connection, and what work had been done, and, generally, to investigate fully so as to determine the most feasible and practicable route for a canal across the said Isthmus and the cost of constructing the same by the United States, and report the result of his investigations to Congress with his recommendations; that thereafter, in the year nineteen hundred and two, the President of the United States was, by the act of Congress approved June twenty-eight, in that year, "authorized to acquire, for and on behalf of the United States, at a cost not exceeding forty millions of dollars, the rights, privileges, franchises, concessions, grants of
8 land, right of way, unfinished work, plants, and other property, real, personal, and mixed, of every name and nature, owned by the New Panama Canal Company, of France, on the Isthmus of Panama, and all its maps, plans, drawings, records on the Isthmus

of Panama and in Paris, including all the capital stock, not less, however, than sixty-eight thousand eight hundred and sixty-three shares of the Panama Railroad Company, owned by or held for the use of the said canal company, provided a satisfactory title to all of the said property" could be obtained; and that the said property and proprietary rights were, in fact, thereafter, to wit, in the year nineteen hundred and four, acquired and purchased by the United States for the sum of $40,000,000.00.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the said period of time in this count first above mentioned there has existed a certain tract of land, consisting of a large number of acres, to wit, two thousand acres, in the county of Orange and in the said State and southern district of New York, purchased and accepted by the Congress of the United States by the consent of the legislature of the said State of New York, and used by the United States as a fort and military post and reservation, under the name of West Point, over which said tract exclusive jurisdiction was, long before the said period and subsequent to such purchase, ceded by the State of New York to, and ever since such cession has been exercised by, the United States, together with exclusive legislation in all cases whatsoever.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the said period of time, to wit, on the fourth day of October, in the year nineteen hundred and eight, at and within the said fort and military post and reservation of West Point, and in the said State and southern district of New York, the said Press Publishing Company, a corporation theretofore organized and then existing and doing business under and by virtue of the laws of the said State of New York, as aforesaid, so having composed, written, and printed in the said newspaper the false, scandalous, malicious, and defamatory libel in the first count of this indictment set forth, and so having published the same as in the said first count charged, again contriving and unlawfully, wickedly, and maliciously intending to injure, vilify, and prejudice the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell and each of them, to deprive each of them of his good name, fame, credit, and reputation, expose him to hatred, contempt, ridicule, and obloquy, bring him into great scandal, infamy, and disgrace, to excite, induce, tempt, and cause them respectively to commit breaches of the peace, and otherwise to stir up disorder among the people, unlawfully did falsely, wickedly, knowingly, maliciously, and scandalously compose, write, print, and publish, in the said newspaper, to wit, the newspaper called The World, then owned and published by it, the said Press Publishing Company, and by it, the said Press Publishing Company, circulated throughout the United States and the said southern district of New York, and particularly in the said fort and military post and reservation of West Point, as aforesaid, that is to say, in the issue of that newspaper for

the day in this count last above mentioned, a certain other false, scandalous, malicious, and defamatory libel in the form of a newspaper article then and there containing divers false, scandalous, malicious, and defamatory matters in print of and concerning the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, and of and concerning the said matter of the acquisition and purchase, in the year nineteen hundred and four, by the Government of the United States, for the sum of $40,000,000.00, from the said Compagnie Nouvelle du Canal de Panama, of its said property and proprietary rights at the Isthmus of Panama, preliminary to the construction by the Government of the United States of the Panama Canal across that isthmus; which said newspaper article and libel, and false, scandalous, malicious, and defamatory matters in print in this count mentioned, then and there were, and are, of the tenor which here follows, that is to say:

Mack admits he's sifting charges made by Bacon—Says evidence that an American syndicate was concerned in sale of Panama Canal is conclusive—No Tafts were in it, Brother Henry protests—Cromwell stands pat on his denial—Story of his spectacular career.

William Nelson Cromwell added nothing yesterday to his denial of Friday that he or any one allied with him had profited from the sale of the Panama Canal to the United States Government. W. J. Curtis, the partner of Mr. Cromwell, who placed "certain matters" before District Attorney Jerome, refused to talk to reporters.

Norman E. Mack, chairman of the Democratic national committee, issued a statement, in which he admitted that the committee had been in communication, but "not directly," with Col. Alexander S. Bacon, a lawyer, at No. 37 Liberty street.

Col. Bacon was intensely aroused over the article published in Saturday's World to the effect that he had recently returned from Paris, where he investigated the details of the American syndicate which is said to have bought the Panama Canal from the French company and had sold it at a large profit to the United States Government.

Denial from the Tafts.

Henry W. Taft, brother of William H. Taft, Republican nominee for President, and of Charles P. Taft, who has been mentioned as one of the American syndicate, pronounced the story a "fake" through and through.

"Neither I, my brother, the Judge, or Charles P. Taft had anything to do with the Panama Canal sale," he told a World reporter last night. "The whole thing is a dream."

"It may be that Charley had dinner with M. Bunau-Varilla. I do not deny that. But, speaking for all of the Taft brothers, you must quote me as saying that none of us had any part in the Panama Canal sale."

At Democratic and Republican national headquarters the disclosure aroused great interest. Chairman Norman E. Mack, of the
9 Democratic national committee, gave out an interview in which he admitted that the matter had been considered. The Republicans sat tight.

"Matter now being considered."

"Has the Democratic national committee taken cognizance of the report that William Nelson Cromwell, Henry W. Taft, and Douglas Robinson, brother-in-law of President Roosevelt, were engaged in a Panama stock speculation and induced the United States Government to make the Panama Canal purchase?" was asked Chairman Mack.

"Yes," he replied, "the matter is now under consideration, and the committee has agreed with me that it is a matter that belongs to the newspapers."

"Has the committee had any relations with Col. Alexander F. Bacon?"

"Not directly."

"Did Col. Bacon submit any information to this committee?"

"Not directly, to my knowledge, although he has talked to some members of the committee."

"What is the status of the committee's information at present?"

"The evidence, so far, as given to the committee, in many instances is conclusive. But the liability of those presenting it is one of the things which the committee has had under advisement."

"Is the evidence presented to you conclusive that there was an American institute?"

No doubt about syndicate.

"I do not think there is any doubt about that. It is conclusive in that *that* respect as far as I can learn—at least that is my general understanding of it."

"Were the names of that American syndicate brought out in the Senate investigation?"

"These three names mentioned were given to the committee."

Concluding his interview, Mr. Mack gave out a list of twelve corporations with which he said William Nelson Cromwell is connected. They are the American Cotton Oil Company, American Surety Company, Bowling Green Trust Company, Dame & Townsend Company, International Nickel Company, Milwaukee Heat, Light and Traction Company, North American Company, Shelby Iron Company, Sterling Iron and Railway Company, United Bank Note Corporation, and Panama American Corporation.

Wonder what the profit was.

The sensation of the day at Democratic and Republican headquarters was not so much a disputing of whether or not an American

syndicate had bought the Panama Canal, but who composed the syndicate and what profit they reaped.

William Nelson Cromwell, who was counsel for Panama, as well as for the French company, and who, it was reported at the time, cleared a matter of $1,000,000 or $2,000,000 for his expert work in making the sale, has declared that he never even saw Douglas Robinson, brother-in-law of the President. No member of the Taft family, he asserts, had the remotest connection with Panama Canal matters.

Following the statement of Norman E. Mack, it was common talk yesterday at Democratic headquarters that the World had developed the most pertinent feature of the present campaign. It was said there that the Panama Canal exposure was being saved for a cataclysmic broadside to be delivered at the shank of the campaign.

It was deplored that the matter should have been given publicity through the complaint of W. J. Curtis to District Attorney Jerome. Cromwell, Jerome, Curtis, and Col. Bacon were all reticent in discussing any details of the proposition laid before the district attorney's office.

Col. Bacon sent a letter to the press branding parts of his interview with the World reporter as a fabrication, although the statement of Chairman Mack indicates that the Colonel was in indirect communication with the Democratic national committee.

The committee has been dickering for some time to secure evidence on the queer doing behind Panama Canal purchase. It was on the point of finding out the identity of the members when the World article scared everybody off. The committee does not believe that this syndicate made anything like $36,500,000, but it is convinced that perhaps $6,000,000 was cleared.

Cromwell is a marvel at putting through big deals—Had run of White House and War Department after sale of Panama Canal to United States—Match in intellect for biggest men in the country.

No stranger or more complex personage exists in the financial district than William Nelson Cromwell, whose law partner, W. J. Curtis, went to District Attorney Jerome with a complaint that some one was endeavoring to obtain money from Mr. Cromwell for the suppression of alleged facts concerning enormous profits made out of the sale of the Panama Canal to the United States Government in 1904.

Mr. Cromwell issued a statement flatly denying that either he, Douglas Robinson, brother-in-law of President Roosevelt, or Charles P. Taft, brother of William H. Taft, the Republican candidate for President, had bought up the stock of the Panama Canal Company from the French shareholders and had divided the major part of the $40,000,000 received from the United States Government among themselves and their associates.

That Mr. Cromwell took an active part in promoting the revolution on the Isthmus which took the canal territory from Colombia and created the Republic of Panama, and that the Roosevelt administra-

tion had advance knowledge of the manufactured revolution and took steps to make it a success by having warships near at hand, has been repeatedly charged. Before the Panama Canal could be sold to the United States Government a clear title had to be guaranteed, and that was impossible as long as Colombia owned the Isthmus.

Revolution came at time set.

Other men would have been daunted and given up hope of making the $40,000,000 sale. But Mr. Cromwell got busier than ever through agents in Washington, the Isthmus, and elsewhere, and in some manner that has not yet been satisfactorily explained the revolution occurred at the time set. American warships which ordinarily would have been far from the scene arrived off Panama at the psychological moment, the "revolutionists" got control of the Isthmus, and the new Government, formed promptly, granted all of the concessions and conditions which the United States Government insisted upon before it would buy what Mr. Cromwell had to sell. The deal was put through, and on May 9, 1904, Secretary of the Treasury Shaw signed the $40,000,000 warrant, the largest ever drawn by the Government, in payment for the canal property.

What Mr. Cromwell got out of this has always been conjectural. It has been said that he was to get a five per cent commission and to pay all the expenses himself. Five per cent of $40,000,000 is $2,000,000, but it costs something to manufacture a revolution. Mr. Cromwell has been credited with making $1,000,000 out of the sale, but this may be erroneous, too.

Cut his bill $600,000.

On Jan. 2 last a cablegram from Paris to the New York newspapers stated that the exact amount of Mr. Cromwell's bill to the French Panama Canal Company was $724,167.77, and furthermore that the Frenchmen regarded this as so highly excessive that they refused to pay it. The bill was finally arbitrated and the arbitrators fixed Mr. Cromwell's compensation at $125,000. The arbitrators in lopping $600,000 from Mr. Cromwell's bill took into consideration the fact that for nine years and a half the French canal company had paid him an annual retainer of $10,000.

Mr. Cromwell is about 5 feet 8 inches high and medium in build. He is fifty-four years old, but his hair and mustache have been snow white for years. He wears his hair, which is curly, longer than most men, and crowns it almost invariably with a glistening silk hat. His wealth of snowy hair topped with the high hat gives him rather a theatrical look, but there is nothing theatrical about his methods. He can dig deeper and do big things more quietly than almost any one downtown, and that means something.

His eyes are a brilliant light blue, as clear as a baby's and as innocent looking as a girl's. His complexion also would not shame a

maiden. He can smile as sweetly as a society belle and at the same time deal a blow at a business foe that ties him into a hopeless tangle of financial knots.

A wonder at figures.

Mr. Cromwell is professionally a corporation lawyer, but he is many other things, too. He is a wizard with figures and a shorthand writer of wonderful skill. He was born in Brooklyn in 1854, and no great amount of money was spent on his education. He had to get out early and dig for himself. He got a job as office boy or junior clerk in a railroad company's office, and there his intuitive skill with figures pushed him rapidly ahead. He displayed other qualities of intellect that marked him from the ordinary.

John E. Searles, the old-time "Sugar King," stumbled across young Cromwell and advised him to study law. It wasn't hard for Cromwell to prepare himself for admission to the Columbia Law School, and he was graduated in the same class with William B. Hornblower. He entered the law office of Sullivan, Kobbe & Fowler, the head of which firm was Algernon S. Sullivan, the Chesterfield of the United States bar. In time other partners dropped out and Mr. Cromwell was taken into the firm, which became Sullivan & Cromwell. In 1888 Mr. Sullivan died, and his place was taken by his son George H. Sullivan. Since then Mr. Cromwell has been "the whole works" in the firm, Mr. Sullivan being seldom heard of.

His first big exploit.

Not until 1891 did Mr. Cromwell do anything that made him stand out as a lawyer of exceptional gifts. In that year the great firm of Decker, Howell & Co. went under owing $10,000,000. It was a bad failure, and it looked as if little could be saved for the creditors. Mr. Cromwell was made assignee, and within six weeks the involved affairs of the firm had been straightened out, the creditors had been paid dollar for dollar, and the firm was doing business again. For that work the court awarded him a fee of $260,000, the largest of its kind up to that time, and instead of regarding it as excessive the firm supplemented it with a gift of a massive silver service.

Since then Mr. Cromwell has had a hand in nearly every big piece of litigation that has come along in the Wall street district. He is an artist at pulling a badly involved company out of a hole, and has more ways of getting around a seemingly hopeless proposition than seem possible to his adversaries.

He is one of the readiest talkers in town. No life insurance agent could beat him. He talks fast, and when he wishes to, never to the point. At the height of the life insurance scandal Mr. Cromwell spent two hours and a half in District-Attorney Jerome's office. Mr. Cromwell went there with the avowed purpose of telling Mr. Jerome all the inside secrets of the "yellow dog" fund in the Equitable Life.

After Mr. Cromwell, smiling and affable, had left, Mr. Jerome admitted he had not been able to get a solitary fact out of him.

Mr. Cromwell has an intellect that works like a flash of lightning, and it swings about with the agility of an acrobat. Lawyers say the only man who can combat him in a conflict in court is Samuel Untermyer. Whenever the two meet they always have a big audience of their own profession.

More than a match for Morgan.

In the winter, spring, and early summer of 1906 Mr. Cromwell was repeatedly a witness before the Senate Committee on Interoceanic Canals, and day after day was put on the grill by the late Senator Morgan, of Alabama, regarded by many as the ablest figure in the upper House of Congress. Senator Morgan went at Mr. Cromwell mercilessly to find out the true inwardness of the sale of the Panama Canal to the United States, and of many queer things that had happened on the Isthmus, but he never found out. With all the power of the United States Senate supposedly behind him to punish a contumacious witness, and with his own great inquisitorial skill, Senator Morgan never made any substantial headway against Cromwell.

11 Many times during that inquiry it seemed as if Senator Morgan was on the verge of making a monumental disclosure, which would have been equally disastrous to President Roosevelt and his adminstration, but the nimble witted Cromwell always stood in the way.

The friendship which began between the President, soon after he succeeded Mr. McKinley, and the New York lawyer was always a deep mystery. For several years Mr. Cromwell had the freedom of the White House. Then after the Government paid the $40,000,000 for the Panama Canal and Mr. Cromwell became counsel for the Panama Republic and also its fiscal agent he had the run of the War Department in the same free-handed way. Secretary of War Taft, who was in supreme charge of the Canal Zone and building the canal, seemed to rely wholly upon the New York lawyer.

Cromwell was close to Taft.

In November of 1904, when Secretary Taft went to Panama on the United States cruiser "Columbia," he took along with him Mr. Cromwell. Later during absences of Secretary Taft from Washington Mr. Cromwell, a private citizen, practically ran the War Department as far as the canal was concerned.

On July 25, 1905, the World printed a telegraphic despatch from Washington, which said:

"During the absence of Secretary Taft William Nelson Cromwell is discharging as many of the functions of the head of the War Department, pertaining to the canal, as possible. * * * The Presi-

dent's powers under the Spooner law authorizing him to build the canal are practically without limitation and he has seen fit to make use of Mr. Cromwell in many capacities."

John F. Wallace, chief engineer of the Panama Canal, who suddenly resigned his position and brought down upon his head the wrath of President Roosevelt and Secretary Taft, was called shortly afterward as a witness before the Senate Interoceanic Canals Committee. Questioned about Mr. Cromwell's activities in the affairs of the Panama Canal, Mr. Wallace testified on Feb. 5, 1906:

Thought Cromwell dangerous.

"Part of my errand in coming home was to shake Cromwell off my shoulders. I did not think his conection with the work was desirable. Cromwell may be perfectly harmless, but he appears to me to be a dangerous man.

"I thought about him as being the man who brought about the sale of the canal to the Government, who brought about the revolution in Panama, who assisted the Government of Panama in making its investments, who is carried on the diplomatic list of that Government, and who is interested in public utilities on the Isthmus. I felt that a man mixed in so many things might have his mind perverted and at some time he might give the wrong advice and the result would be scandal."

Mr. Wallace was asked by Senator Morgan what first caused him to regard Mr. Cromwell with suspicion. Mr. Wallace replied that he looked over the report of the Panama Railroad Company and discovered that its board of directors had declared a dividend of more than $100,000 in excess of what the road had earned, and afterward sold bonds for money with which to repair its ships and rolling stock.

"I then reached the final conclusion," said Mr. Wallace, "that a man who would thus advise the Government is a dangerous man, and one having a tendency toward high finance."

In reply to other questions Mr. Wallace said he did not believe Mr. Cromwell could honestly and with safety to the Government act as counsel for the Government and the Panama Railroad Company and at the same time present a claim against the Government in behalf of the New Panama Canal Company.

Wouldn't answer many questions.

When Mr. Cromwell was a witness before the Senate Committee on Interoceanic Canals in the spring of 1906 he refused flatly to answer many questions put to him about the sale of the canal to the United States Government. Senator Morgan declared many times he would have Mr. Cromwell punished as a recalcitrant witness, but all these threats had no effect on Mr. Cromwell, who received them with bland smiles and kept on refusing to answer when he didn't like the question, until the end of the inquiry. Finally, in January of 1907, when the

Senate passed a bill placing the Panama Railroad Company, of which Mr. Cromwell was counsel, under the control of the Isthmian Canal Commission, Senator Morgan abandoned his efforts to have Cromwell punished for contumacy. He said his only desire was to have Cromwell eliminated from all connection with the Panama Canal.

There was one group of questions which Mr. Cromwell did answer and they related to the same subject involved in the matter laid before District-Attorney Jerome—the charge that Mr. Cromwell and some others had bought Panama Canal shares from the French stockholders in anticipation of an immense profit by the sale of the property to the United States. Mr. Cromwell then, as he did through the World yesterday, denied absolutely any such interest in the Old Panama Canal Company.

His testimony before committee.

Following is the testimony on that subject before the Senate committee, Senator Morgan being the questioner and Mr. Cromwell on the witness stand:

"What are the gross sums you and Mr. Farnham have received from all sources connected with the canal affair since that payment to J. P. Morgan & Co., whether from the Old or the New Panama Canal Company, or any shareholders or syndicate of expectant or actual shareholders in them, or either of them, or from the Panama Railroad Company, or from the United States, or from the Republic of Panama, and were such sums received by yourself and Mr. Farnham wholly or yourselves or partly to be paid to other persons?"

"Senator Morgan, I thank you for that question."

"Well, sir, I will be obliged to you not to express your compliments in public." (Laughter.)

"Well, my dear Senator, I think much better of you than you think I do. I thank you for this question."

12 "Please forbear to compliment me in public. I propose to answer it completely because it relates to a time subsequent to the transfer, as to which I consider that I am in duty bound to give this committee all information within my power."

"And nothing before?"

Denies he received a dollar.

"I do not consider it appropriate to discuss the period anterior; first, because this committee has no power to go into that subject; and, secondly, because it involves confidential communication. To the second question which you have asked me, I wish to give an explicit answer. I have not received one dollar of the $40,000,000 from the new Panama Canal Company. My final bill in that regard I will present in due course as any professional bill, and it will be substantial. It will be paid; of that I have no concern.

"I have not received from the Government of Panama a single penny for any purpose whatever. I have not received or obtained

benefit directly or indirectly in the remotest manner that human ingenuity could describe to the extent of a single farthing from any syndicate, combination, or party in connection with the sale of the Panama Canal. I was never interested in the securities of the new Panama Canal Company nor in the securities of the old Panama Canal Company. I never owned a dollar in either and never had a pecuniary interest of the remotest character in either, and consequently I never had a single dollar of benefit therefrom. My whole relation to the Panama Canal affair is that of counsel practising his profession purely as a lawyer and having no pecuniary interest in any one of the relations, direct or indirect, surrounding the Panama Canal. My sole compensation, or that of my firm, rather, has been the stipend paid by the Panama Railroad Company as its general counsel, which place we had occupied for ten years preceding the transfer to the United States and which we were requested to continue during the past two years."

Mr. Cromwell to other questions said his answer applied to Mr. Farnham and all other employees of his firm, as well as to himself.

New company is organized.

It was brought out by Senator Morgan on Dec. 27, 1899, that pursuant to a plan devised by Mr. Cromwell to Americanize the French Panama Canal Company he, with the aid of Francis Lynde Stetson, personal counsel to J. Pierpont Morgan, had the Panama Canal Company of America incorporated under the laws of New Jersey. The stated purposes of the company were to acquire by purchase the Panama Canal from the French company and complete its construction. The capital stock was fixed at $3,000,000, but the amount with which it commenced business was $5,000. The incorporators were stated to be William P. Chapman, jr., Henry W. Clark, and Francis D. Pollack. The names of Mr. Cromwell and Mr. Stetson appeared on the incorporation papers merely as subscribing witnesses.

A few months later, on March 21, 1900, the Interoceanic Canal Company, with a capital of $100,000,000, was organized with wider powers than the other company. Seven incorporators, all living in Jersey City, and claiming to own ten shares of stock each, were named in the paper.

Mr. Cromwell flatly refused to answer questions concerning who were behind these companies. He declared the projects were "abortive" and came to nothing. Senator Morgan tried to show the existence of an American syndicate organized by Mr. Cromwell to buy the Panama Canal from the French owners, but was unable to make any headway because of the tactics adopted by Mr. Cromwell.

Made Sheldon treasurer.

Mr. Cromwell has many gifts. He selected George R. Sheldon as treasurer of the Republican campaign committee. On July 7 last,

when it was announced in the newspaper despatches from Hot Springs, Va., that Candidate Taft purposed naming Representative W. B. McKinley as treasurer, he got a telegram from Mr. Cromwell asking him to delay the appointment until he could reach Hot Springs and talk the matter over. The next day Mr. Cromwell got to Hot Springs, had a long conference with Mr. Taft and that same day it was announced Mr. Sheldon had been chosen collector of the campaign funds. Mr. Cromwell and Mr. Sheldon are directors in some of the same corporations. Sheldon is regarded as a Morgan man in Wall street, while Cromwell is called a Harriman man.

Mr. Cromwell was one of the powers behind the throne at the Republican convention in Chicago which nominated Taft. He was one of the very few men who had a hand in drawing up the platform of the Republican party. He worked over it for days before the platform committee, which supposedly drew it, even saw it.

A friend of Harriman.

Mr. Cromwell helped Harriman knock Stuyvesant Fish out of the Illinois Central road and also helped Harriman beat down the minority stockholders of the Wells-Fargo Company when they tried to get a small share of the enormous surplus of the company in the form of increased dividends. It was in this fight that Cromwell, speaking of Harriman, uttered these historic words:

"He moves in a higher world into which we cannot hope to enter."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said publication of the last-mentioned false, scandalous, malicious, and defamatory libel then and there, to wit, on the said fourth day of October, in the year nineteen hundred and eight, at and within the said fort and military post and reservation, and in the said State and Southern District of New York, was accomplished by the said Press Publishing Company knowingly delivering, and causing to be delivered, for perusal by persons residing at the said fort and military post and reservation, a large number of copies, to wit, twenty-nine copies, of the said newspaper, so then and there containing the false, scandalous, malicious, and defamatory newspaper article and libel in this count mentioned, at a certain store there situate, to wit, the post exchange, a mercantile concern then
13 and there dealing, amongst other things, in current newspapers; it, the said Press Publishing Company, then and there well knowing all the premises in this indictment aforesaid, and well knowing the false, scandalous, malicious, and defamatory newspaper article and libel in this count set forth to be, as it then and there was, so printed in each of the said copies of the said newspaper, and well knowing the same to be, as it then and there was, and is, false.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Press Publishing Company then and there, to wit, at the time and place of so composing, writing, print-

ing, and publishing the said false, scandalous, malicious, and defamatory libel, as in this count aforesaid, in and by the same did mean and intend to charge, and the same taken as a whole then and there did, and does, mean and charge, and convey to a reader thereof the idea, particularly that the said Theodore Roosevelt, in violation of his lawful duty as President of the United States, and the said William Howard Taft, in violation of his lawful duty as Secretary of War and as cabinet adviser of the President, had, before the event, and before it was known to the public, dishonestly, fraudulently, corruptly, and criminally disclosed to other and unofficial persons, to wit, the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, in order that those persons might make use of the same for their own personal ends and profit, and that those persons had, in fact, dishonestly, fraudulently, corruptly, and criminally accepted and made use of the same for their own personal ends and profit, the information that the Government of the United States was about to acquire and purchase the said property and proprietary rights of the said New Panama Canal Company for the sum of $40,000,000 and had thereby secured for the said persons an enormous and exorbitant profit—and, generally, that the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, as principals and as accessories, had engaged in, and were suspected of having engaged in, unlawfully, dishonest, fraudulent, and criminal practices in the nature of conspiracy to defraud the United States and others, bribery of and by United States officers and Members of Congress and of officers of foreign governments, interference with the affairs of foreign governments, and breaches of official and professional trust, in connection with the said acquisition and purchase of the said property and proprietary rights, whereby they secured for themselves without right enormous sums of money from the Treasury of the United States.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said Press Publishing Company, in manner and form and at the time in this count aforesaid, and in a place which had been ceded to and was, and is, under the jurisdiction of the United States, unlawfully did commit the offense of falsely, wickedly, knowingly, maliciously, and scandalously composing, writing, printing, and publishing a criminal libel upon the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, to their great damage, scandal, infamy, and disgrace, to the evil example of all others in like case offending, and against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

THIRD COUNT.

And the grant jurors aforesaid, upon their oath aforesaid, do further present, that during the period of time from the fourteenth day of September, in the year nineteen hundred and one, to the day

of the finding and presentation of this indictment, Theodore Roovevelt has been President of the United States, while Douglas Robinson was and is a brother-in-law of the said Theodore Roosevelt; that William Howard Taft from the first day of February, in the year nineteen hundred and four, until the thirtieth day of June, in the year nineteen hundred and eight, was Secretary of War of the United States, and at the time of the committing, by the defendant hereinafter named, of the offense in this count of this indictment mentioned, was the Republican candidate and nominee for the office of President of the United States, and Charles P. Taft was a brother of the said William Howard Taft; that William Nelson Cromwell, during all the said period of time from the said fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, has been and is an attorney and counsellor at law, residing and practicing his profession in the city of New York, in the State of New York, and has had for one of his clients the Compagnie Nouvelle du Canal de Panama in this count of this indictment hereafter mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in the year eighteen hundred and eighty-eight, the Compagnie Universelle du Canal Interoceanique de Panama, a corporation (sometimes referred to as the De Lesseps Canal Company and sometimes as the Old Panama Canal Company) organized under the laws of France, which had acquired certain concessions from the Republic of Colombia to construct a maritime canal across the Isthmus of Panama, had commenced to construct such canal, but had failed to complete the same, became insolvent, and its affairs were placed in the hands of a receiver (in France called a liquidator) pursuant to proceedings to that end in the French courts; that thereafter, in the year eighteen hundred and ninety-four, the property, rights, franchises, and concessions of the said corporation were disposed of by the said liquidator to the Compagnie Nouvelle du Canal de Panama, a joint stock company organized under the laws of France, and sometimes called the New Panama Canal Company, which company carried forward the work of constructing the said canal, but not to completion; that after that, and in the year eighteen hundred and ninety-nine, the President of the United States was authorized by law to make an investigation of the Isthmus of Panama with a view to the construction of a canal across the same by the United States, to investigate the available routes for such canal,

14 particularly the Nicaraguan and the Panama routes, with a view to determining what was the most practicable route, to ascertain what rights and franchises were already held by others in that connection, and what work had been done, and, generally, to investigate fully so as to determine the most feasible and practicable route for a canal across the said Isthmus and the cost of constructing the same by the United States, and report the result of his investigations to Congress with his recommendations; that thereafter, in the year nineteen hundred and two, the President of the

United States was, by the act of Congress approved June twenty-eight, in that year, "authorized to acquire, for and on behalf of the United States, at a cost not exceeding forty millions of dollars, the rights, privileges, franchises, concessions, grants of land, right of way, unfinished work, plants, and other property, real, personal, and mixed, of every name and nature, owned by the New Panama Canal Company, of France, on the Isthmus of Panama, and all its maps, plans, drawings, records on the Isthmus of Panama and in Paris, including all the capital stock, not less, however, than sixty-eight thousand eight hundred and sixty-three shares of the Panama Railroad Company, owned by or held for the use of the said canal company, provided a satisfactory title to all of the said property" could be obtained; and that the said property and proprietary rights were, in fact, thereafter, to wit, in the year nineteen hundred and four, acquired and purchased by the United States for the sum of $40,000,000.00.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the said period of time in this count first above mentioned there has existed a certain tract of land, consisting of a large number of acres, to wit, two thousand acres, in the county of Orange and in the said State and southern district of New York, purchased and accepted by the Congress of the United States by the consent of the legislature of the said State of New York, and used by the United States as a fort and military post and reservation, under the name of West Point, over which said tract exclusive jurisdiction was, long before the said period and subsequent to such purchase, ceded by the State of New York to, and ever since such cession has been exercised by, the United States, together with exclusive legislation in all cases whatsoever.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the said period of time, to wit, on the seventh day of October, in the year nineteen hundred and eight, at and within the said fort and military post and reservation of West Point, and in the said State and southern district of New York, the said Press Publishing Company, a corporation theretofore organized and then existing and doing business under and by virtue of the laws of the said State of New York, so having composed, written, and printed in the said newspaper the false, scandalous, malicious, and defamatory libels in the first and second counts of this indictment set forth, and so having published the same respectively as in the said first and second counts charged, again contriving and unlawfully, wickedly, and maliciously intending to injure, vilify, and prejudice the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, and each of them, to deprive each of them of his good name, fame, credit, and reputation, expose him to hatred, contempt, ridicule, and obloquy, bring him into great scandal, infamy, and disgrace, to excite, induce, tempt, and cause them, respectively, to commit breaches of the peace, and otherwise to stir up disorder among the people, unlawfully did

falsely, wickedly, knowingly, maliciously, and scandalously compose, write, print, and publish in the said newspaper, to wit, the said newspaper called the World, then owned and published by it, the said Press Publishing Company, and by it, the said Press Publishing Company, circulated throughout the United States and the said southern district of New York, and particularly in the said fort and military post and reservation of West Point, as aforesaid, that is to say, in the issue of that newspaper for the day in this count last above mentioned, a certain other false, scandalous, malicious, and defamatory libel in the form of a newspaper article then and there containing divers false, scandalous, malicious, and defamatory matters in print of and concerning the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, and of and concerning the said matter of the acquisition and purchase, in the year nineteen hundred and four, by the Government of the United States, for the sum of $40,000,000, from the said Compagnie Nouvelle du Canal de Panama, of its said property and proprietary rights at the Isthmus of Panama, preliminary to the construction by the Government of the United States of the Panama Canal across that Isthmus; which said newspaper article and libel, and false, scandalous, malicious, and defamatory matters in print in this count mentioned, then and there were, and are, of the tenor which here follows, that is to say:

J. P. Morgan in Cromwell's canal syndicate deal—Chicago Daily News gathers in Paris facts regarding the $36,500,000 Panama transaction—"Government worked," says company's lawyer—"Shares considered practically worthless by thousands of peasants."

[Special to the World.]

Chicago, Oct. 6.—After the World published exclusively last Saturday the fact that a syndicate headed by William Nelson Cromwell, of New York, had reaped $36,500,000 profit in the sale of the securities of the French Panama Canal Company to the United States Government the Daily News cabled its correspondent in Paris to investigate the transaction. The result of the correspondent's inquiries is told in the following special cable published by the Daily News this afternoon:

Shares and influence.

"Paris, France, Oct. 6.—The agents of a French bank in Paris, who helped to conduct successfully the arrangements which led to the sale of the Panama Canal to the United States Government, express surprise that the part played in the negotiations by a group of American financiers should be considered in any way to their discredit.

"As one bank official said: 'These gentlemen were engaged for many months in buying up the old Panama shares at the cheapest rate possible. When they had enough shares, or enough influence, to control the fate of the canal, they man-

aged to bring to a successful issue the pourparlers with the American Government.'

"On several occasions political agents have been in Paris investigating reports that an American syndicate, and not the French company, really sold the canal to the United States, but they were unable to obtain the complete details. The last investigator was a certain Col. Bacon, who grew weary over the obstacles placed in his way, but who returned with sufficient data, so it is said, to 'make things hot' for the members of the syndicate concerned. These men, so say officials who came in contact with them here, were Charles P. Taft, William Nelson Cromwell, and J. Pierpont Morgan, the last named being much in the background. There were several others whose names cannot be given with certainty, but it is alleged that there is no mistake about the three names mentioned.

The Government "worked."

"When shown yesterday Mr. Taft's denial that he had anything to do with the matter, an eminent American lawyer here, concerned in the old company's affairs, laughed frankly and said:

"'They will have a hot time over this thing if it has been published as a campaign bomb. Agents of these men whose names I have given you, as well as of others whose identity I am not at liberty to disclose, quietly bought up for several months thousands of shares of the old Panama Company and many of the bonds of the new company all through the country. The small holders of canal paper hastened to take advantage of the 'free for nothing' gifts so unaccountably laid at their doors, for the shares for many years had been considered practically worthless by thousands of peasants and other modest owners.

"In the meantime at home the Government was being successfully worked by the syndicate, and especially by a western member thereof.

"Bought from its own citizens."

"'In reality the United States bought the canal from its own citizens instead of the French shareholders. The distinction was not here thought sufficiently important to require that attention be called to it, although I myself am inclined to think the United States could have made a better bargain—a far better bargain—by dealing directly with the French. This opinion has been disputed, but I am convinced of its truth.'

"M. Huntin, a prominent engineer of the old canal company and an opponent of the sale to the syndicate, said he thought the sum paid by the United States was sufficient, but that it never reached the shareholders of the old or new French companies, as the United States Government naively thought it did. Technically, however, added M. Huntin, the event was 'merely a financial transaction which is not calculated in these days to excite criticism of an adverse nature either in France or America.'"

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said publication of the last-mentioned false, scandalous, malicious, and defamatory libel then and there, to wit, on the said seventh day of October, in the year nineteen hundred and eight, at and within the said fort and military post and reservation, and in the said State and Southern District of New York, was accomplished by the said Press Publishing Company, knowingly delivering and causing to be delivered, for perusal by persons residing at the said fort and military post and reservation, a large number of copies, to wit, twenty-nine copies, of the said newspaper, so then and there containing the false, scandalous, malicious, and defamatory newspaper article and libel in this count mentioned, at a certain store there situate, to wit, the post exchange, a mercantile concern then and there dealing, amongst other things, in current newspapers; it, the said Press Publishing Company, then and there well knowing all the premises in this indictment aforesaid, and well knowing the false, scandalous, malicious, and defamatory article and libel in this count set forth to be, as it then and there was, so printed in each of the said copies of the said newspaper, and well knowing the same to be, as it then and there was, and is, false.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Press Publishing Company then and there, to wit, at the time and place of so composing, writing, printing, and publishing the said false, scandalous, malicious, and defamatory libel as in this count aforesaid, in and by the same did mean and intend to charge, and the same taken as a whole then and there did, and does, mean and charge, and convey to a reader thereof the idea, particularly that the said Theodore Roosevelt, in violation of his lawful duty as President of the United States, and the said William Howard Taft, in violation of his lawful duty as Secretary of War and as Cabinet advisor of the President, had dishonestly, fraudulently, corruptly, and criminally combined with the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, and with others, and the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell had in like manner combined with them the said Theodore Roosevelt and William Howard Taft, in a so-called syndicate, to acquire, and such syndicate has acquired the said property and rights of the said New Panama Canal Company at a very low price, to wit, for the sum of $3,500,000.00 in advance of the acquisition and purchase of the same by the United States for the sum of $40,000,000.00, and had thereby secured for the said syndicate an enormous and exorbitant profit, to wit, a profit of $36,000,000.00—that the said Theodore Roosevelt and William Howard Taft as such President and Secretary, respectively, had dishonestly, fraudulently, corruptly, and criminally urged upon the Congress of the United States and procured the necessary legislation for acquiring and purchasing the said property and rights for the sum of $40,000,000.00—and, generally, that the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell as principals and as

accessories had engaged in and were suspected of having engaged in unlawful, dishonest, fraudulent, and criminal practices in the
16 nature of conspiracy to defraud the United States and others, bribery of and by United States officers and Members of Congress and of officers of foreign governments, interference with the affairs of foreign governments, and breaches of official and professional trust in connection with the said acquisition and purchase of the said property and proprietary rights whereby they secured for themselves without right enormous sums of money from the Treasury of the United States.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said Press Publishing Company, in manner and form and at the time in this count aforesaid, and in a place which had been ceded to and was, and is, under the jurisdiction of the United States, unlawfully did commit the offense of falsely, wickely, knowingly, maliciously, and scandalously composing, writing, printing, and publishing a criminal libel upon the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, to their great damage, scandal, infamy, and disgrace, to the evil example of all others in like case offending, and against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

FOURTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the period of time from the fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, Theodore Roosevelt has been President of the United States, while Douglas Robinson was and is a brother-in-law of the said Theodore Roosevelt; that William Howard Taft from the first day of February, in the year nineteen hundred and four, until the thirtieth day of June, in the year nineteen hundred and eight, was Secretary of War of the United States, and at the time of the committing by the defendant hereinafter named of the offense in this count of this indictment mentioned was a Republican candidate and nominee for the office of President of the United States, and Charles P. Taft was a brother of the said William Howard Taft; that William Nelson Cromwell, during all of the said period of time from the said fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, has been and is an attorney and counsellor at law residing and practising his profession in the city of New York, in the State of New York, and has for one of his clients the Compagnie Nouvelle du Canal de Panama in this count of this indictment hereafter mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that in the year eighteen hundred and eighty-eight, the Compagnie Universelle du Canal Interoceanique de Panama, a

corporation (sometimes referred to as the De Lesseps Canal Company and sometimes as the Old Panama Canal Company) organized under the laws of France, which had acquired certain concessions from the Republic of Colombia to construct a maritime canal across the Isthmus of Panama, had commenced to construct such canal, but had failed to complete the same, became insolvent, and its affairs were placed in the hands of a receiver (in France called a liquidator) pursuant to proceedings to that end in the French courts; that thereafter, in the year eighteen hundred and ninety-four, the property, rights, franchises, and concessions of the said corporation were disposed of by the said liquidator to the Compagnie Nouvelle du Canal de Panama, a joint-stock company organized under the laws of France and sometimes called the New Panama Canal Company, which company carried forward the work of constructing said canal, but not to completion; that after that, and in the year eighteen hundred and ninety-nine, the President of the United States was authorized by law to make an investigation of the Isthmus of Panama with a view to the construction of a canal across the same by the United States, to investigate the available routes for such canal, particularly the Nicaraguan and the Panama routes, with a view to determining what was the most practicable route, to ascertain what rights and franchises were already held by others in that connection, and what work had been done, and, generally, to investigate fully so as to determine the most feasible and practicable route for a canal across the said isthmus and the cost of constructing the same by the United States, and report the result of his investigations to Congress with his recommendations; that thereafter, in the year nineteen hundred and two, the President of the United States was, by the act of Congress approved June twenty-eight, in that year, "authorized to acquire, for and on behalf of the United States, at a cost not exceeding forty millions of dollars, the rights, privileges, franchises, concessions, grants of land, right of way, unfinished work, plants, and other property, real, personal, and mixed, of every name and nature, owned by the New Panama Canal Company, of France, on the Isthmus of Panama, and all its maps, plans, drawings, records on the Isthmus of Panama and in Paris, including all the capital stock, not less, however, than sixty-eight thousand eight hundred and sixty-three shares of the Panama Railroad Company, owned by or held for the use of the said canal company, provided a satisfactory title to all of the said property" could be obtained; and that the said property and proprietary rights were, in fact, thereafter, to wit, in the year nineteen hundred and four, acquired and purchased by the United States for the sum of $40,000,000.00.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the said period of time in this count first above mentioned there has existed a certain tract of land, consisting of a large number of acres, to wit, two thousand acres, in the county of Orange and in the said State and Southern District of New York, purchased and accepted by the Congress of the United States by the

consent of the legislature of the said State of New York, and used by the United States as a fort and military post and reservation, under the name of West Point, over which said tract exclusive jurisdiction was, long before the said period and subsequent to such purchase, ceded by the State of New York to, and ever since such cession
17 has been exercised by, the United States, together with exclusive legislation in all cases whatsoever.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the said period of time, to wit, on the seventh day of October, in the year nineteen hundred and eight, at and within the said fort and military post and reservation of West Point, and in the said State and Southern District of New York, the said Press Publishing Company, a corporation theretofore organized and then existing and doing business under and by virtue of the laws of the said State of New York, so having composed, written, and printed in the said newspaper the false, scandalous, malicious, and defamatory libels in the first and second counts of this indictment set forth, and so having published the same respectively as in the said first and second counts charged, contrived, and unlawfully, wickedly, and maliciously intended to injury, vilify, and prejudice the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, and each of them, to deprive each of them of his good name, fame, credit, and reputation, expose him to hatred, contempt, ridicule, and obloquy, bring him into great scandal, infamy, and disgrace, to excite, induce, tempt, and cause them respectively to commit breaches of the peace, and otherwise to stir up disorder among the people, unlawfully did falsely, wickedly, knowingly, maliciously, and scandalously compose, write, print, and publish, in the said newspaper, to wit, the said newspaper called The World, then owned and published by it, the said Press Publishing Company, and by it, the said Press Publishing Company, circulated throughout the United States and the said Southern District of New York, and particularly in the said fort and military post and reservation of West Point, as aforesaid, that is to say, in the issue of that newspaper for the day in this count last above mentioned, a certain other false, scandalous, malicious, and defamatory libel in the form of a newspaper article then and there containing divers false, scandalous, malicious, and defamatory matters in print of and concerning the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, and of and concerning the said matter of the acquisition and purchase, in the year nineteen hundred and four, by the Government of the United States, for the sum of $40,000,000.00, from the said Compagnie Nouvelle du Canal de Panama, of its said property and proprietary rights at the Isthmus of Panama, preliminary to the construction by the Government of the United States of the Panama Canal across that Isthmus; which said newspaper article and libel, and false, scandalous, malicious, and defamatory matters in print in this count mentioned, then and there were, and are, of the same tenor as the newspaper article and libel set forth according to its tenor in the third count of this indictment.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said publication of the last-mentioned false, scandalous, malicious, and defamatory libel then and there, to wit, on the said seventh day of October, in the year nineteen hundred and eight, at and within the said fort and military post and reservation, and in the said State and Southern District of New York, was accomplished by the said Press Publishing Company knowingly delivering, and causing to be delivered, for perusal by persons residing at the said fort and military post and reservation, a large number of copies, to wit, twenty-nine copies, of the said newspaper, so then and there containing the false, scandalous, malicious, and defamatory newspaper article and libel in this count mentioned, at a certain store there situate, to wit, the post exchange, a mercantile concern then and there dealing, amongst other things, in current newspapers; it, the said Press Publishing Company, then and there well knowing all the premises in this indictment aforesaid, and well knowing the false, scandalous, malicious, and defamatory newspaper article and libel in this count set forth to be, as it then and there was, so printed in each of the said copies of the said newspaper, and well knowing the same to be, as it then and there was, and is, false.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Press Publishing Company then and there, to wit, at the time and place of so composing, writing, printing, and publishing the said false, scandalous, malicious, and defamatory libel as in this count aforesaid, in and by the same did mean and intend to charge, and the same taken as a whole then and there did, and does, mean and charge, and convey to a reader thereof the idea, particularly that the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell had combined together in a so-called syndicate to acquire the said property and rights of the said New Panama Canal Company at a very low price, to wit, for the sum of $3,500,000.00, in advance of the said acquisition and purchase of the same by the United States for the sum of $40,000,000.00; that the said syndicate, having in fact, as it was so charged, acquired the shares of stock of the French Panama Canal Company (meaning the said New Panama Canal Company) and the other outstanding securities thereof with a view to selling the same to the United States, had, by dishonest, fraudulent, corrupt, and criminal methods, including with others the deceiving of the said President and Secretary of War as to the fact of such syndicate's having a pecuniary interest therein, and imposing upon those officers by means of their said relationship with them and the friendship existing between them, urged upon and secured from the Government of the United States legislation providing for the said acquisition of the said shares of stock and other securities and of the said property and proprietary rights of the said New Panama Canal Company, and urged upon and secured the purchase of the same by the United States; that the said syndicate had thereby dishonestly, fraudulently, corruptly, and criminally reaped an enormous profit, to wit, a profit of

$36,500,000.00, at the expense of the Treasury of the United States; and, generally, that the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, as principals and as accessories, had engaged in, and were suspected of having engaged in, unlawful, dishonest, fraudulent, and criminal practices in the nature of conspiracy to defraud the United States and others, bribery of
18 United States officers and Members of Congress, and breaches of professional trust, in connection with the said acquisition and purchase of the said property and proprietary rights.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Press Publishing Company, in manner and form and at the time in this count aforesaid, and in a place which had been ceded to and was, and is, under the jurisdiction of the United States, unlawfully did commit the offense of falsely, wickedly, knowingly, maliciously, and scandalously composing, writing, printing, and publishing a criminal libel upon the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, to their great damage, scandal, infamy, and disgrace, to the evil example of all others in like case offending, and against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

FIFTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period of time from the fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, Theodore Roosevelt has been President of the United States, while Douglas Robinson was and is a brother-in-law of the said Theodore Roosevelt; that William Howard Taft, from the first day of February, in the year nineteen hundred and four, until the thirtieth day of June, in the year nineteen hundred and eight, was Secretary of War of the United States, and at the time of the committing, by the defendant hereinafter named, of the offense in this count of this indictment mentioned, was the Republican candidate and nominee for the office of President of the United States, and Charles P. Taft was a brother of the said William Howard Taft; that William Nelson Cromwell, during all of the said period of time from the said fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, has been and is an attorney and counsellor at law residing and practising his profession in the city of New York, in the State of New York, and has had for one of his clients the Compagnie Nouvelle du Canal de Panama in this count of this indictment hereafter mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in the year eighteen hundred and eighty-eight, the Compagnie Universelle du Canal Interoceanique de Panama, a corporation (sometimes referred to as the De Lesseps Canal Com-

pany and sometimes as the Old Panama Canal Company) organized under the laws of France, which had acquired certain concessions from the Republic of Colombia to construct a maritime canal across the Isthmus of Panama, had commenced to construct such canal, but had failed to complete the same, became insolvent, and its affairs were placed in the hands of a receiver (in France called a liquidator) pursuant to proceedings to that end in the French courts; that thereafter, in the year eighteen hundred and ninety-four, the property, rights, franchises, and concessions of the said corporation were disposed of by the said liquidator to the Compagnie Nouvelle du Canal de Panama, a joint-stock company organized under the laws of France and sometimes called the New Panama Canal Company, which company carried forward the work of constructing the said canal, but not to completion; that after that, and in the year eighteen hundred and ninety-nine, the President of the United States was authorized by law to make an investigation of the Isthmus of Panama with a view to the construction of a canal across the same by the United States, to investigate the available routes for such canal, particularly the Nicaraguan and the Panama routes, with a view to determining what was the most practicable route, to ascertain what rights and franchises were already held by others in that connection, and what work had been done, and generally, to investigate fully so as to determine the most feasible and practicable route for a canal across the said Isthmus and the cost of constructing the same by the United States, and report the result of his investigations to Congress with his recommendation; that thereafter, in the year nineteen hundred and two, the President of the United States was, by the act of Congress approved June twenty-eight, in that year, "authorized to acquire, for and on behalf of the United States, at a cost not exceeding forty millions of dollars, the rights, privileges, franchises, concessions, grants of land, right of way, unfinished work, plants, and other property, real, personal, and mixed, of every name and nature, owned by the New Panama Canal Company, of France, on the Isthmus of Panama, and all its maps, plans, drawings, records on the Isthmus of Panama and in Paris, including all the capital stock, not less, however, than sixty-eight thousand eight hundred and sixty-three shares of the Panama Railroad Company, owned by or held for the use of the said canal company, provided a satisfactory title to all of the said property" could be obtained; and that the said property and proprietary rights were, in fact, thereafter, to wit, in the year nineteen hundred and four, acquired and purchased by the United States for the sum of $40,000,000.00.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the said period of time in this count first above mentioned there has existed a certain tract of land, consisting of a large number of acres, to wit, two thousand acres, in the county of Orange and in the said State and southern district of New York, purchased and accepted by the Congress of the United States by the consent of the legislature of the said State of New York, and used

by the United States as a fort and military post and reservation, under the name of West Point, over which said tract exclusive jurisdiction was, long before the said period and subsequent to such purchase, ceded by the State of New York to, and ever since such cession has been exercised by, the United States, together with exclusive legislation in all cases whatsoever.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the said period of time, to wit, on the fourteenth day of October, in the year nineteen hundred and eight, at and within the said fort and military post and reservation
19 of West Point, and in the said State and southern district of New York, the said Press Publishing Company, a corporation therefore organized and then existing and doing business under and by virtue of the laws of the said State of New York, so having composed, written, and printed in the said newspaper the false, scandalous, malicious, and defamatory libels in the first, second, and third counts of this indictment set forth, and so having published the same respectively as in the said first, second, and third counts charged, again contriving and unlawfully, wickedly, and maliciously intending to injure, villify, and prejudice the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell and each of them, to deprive each of them of his good name, fame, credit, and reputation, expose him to hatred, contempt, ridicule, and obloquy, bring him into great scandal, infamy, and disgrace, to excite, induce, tempt, and cause them respectively to commit breaches of the peace, and otherwise to stir up disorder among the people, unlawfully did falsely, wickedly, knowingly, maliciously, and scandalously compose, write, print, and publish, in the said newspaper, to wit, the said newspaper called The World, then owned and published by it the said Press Publishing Company, and by it the said Press Publishing Company circulated throughout the United States and the said southern district of New York, and particularly in the said fort and military post and reservation of West Point, as aforesaid, that is to say, in the issue of that newspaper for the day in this count last above mentioned, a certain other false, scandalous, malicious, and defamatory libel in the form of a newspaper article then and there containing divers false, scandalous, malicious, and defamatory matters in print of and concerning the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, and of and concerning the said matter of the acquisition and purchase, in the year nineteen hundred and four, by the Government of the United States for the sum of $40,000,000.00 from the said Campagnie Nouvelle du Canal de Panama, of its said property and proprietary rights at the Isthmus of Panama, preliminary to the construction by the Government of the United States of the Panama Canal across that isthmus; which said newspaper article and libel, and false, scandalous, malicious and defamatory matters in print in this count mentioned, then and there were, and are, of the tenor which here follows, that is to say:

Panama secrets wiped out in Paris, June 3—Shortly before William H. Taft was nominated all records of new Panama Canal Company vanished—Who got $40,000,000 paid is still a mystery—Liquidation of company ceased suddenly—Its archives turned over to U. S.

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Paris, Oct. 13.—A careful investigation undertaken to learn definitely who got the $40,000,000 paid by the United States for the Panama Canal as the result of the sale negotiated by William Nelson Cromwell, of New York, with the Roosevelt adminstration discloses some curious facts.

The report that an American syndicate, organized some time prior to the sale, and including among its members Douglas Robinson, brother-in-law of President Roosevelt, and Charles P. Taft, brother of William H. Taft, the Republican candidate for President, had purchased a large amount of the securities of the Panama Canal Company when they were selling very low, and made a huge profit out of their share of the $40,000,000 paid by the United States is of interest in view of the disclosures as a result of the investigation undertaken by The World.

In the first place every source of official information as to the identity of those who got the $40,000,000 is not only closed, but wiped out, obliterated, as the result of an agreement between the United States Government and the new Panama Canal Company.

The liquidation of the new Panama Canal Company, whose securities the American syndicate was supposed to hold, was suddenly concluded June 3, after going on for four years.

It will be recalled that June 3 was practically on the eve of the convention at Chicago which nominated William H. Taft for President, though Mr. Taft was not actually nominated until June 18.

Immediately after the new Panama Canal Company finished its liquidation, on June 3, its office was closed, the books removed and all traces obliterated, and under an agreement with the United States all of its archives were handed over to that Government. All the secrets of the company are therefore now in the possession of the Roosevelt administration.

The liquidators of the new Panama Canal Company were its directors, and if, as reported, the company was controlled by the American syndicate, its directors would naturally not disclose any of its secrets which the syndicate members deemed best to keep from the public.

M. Lemarquis, liquidator of the old Panama Canal Company, was unable or unwilling to disclose anything concerning the personnel of the new Panama Canal Company, which, through Mr. Cromwell, effected the deal with the United States.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said publication of the last-mentioned false, scandalous, malicious, and defamatory libel then and there, to wit,

on the said fourteenth day of October, in the year nineteen hundred and eight, at and within the said fort and military post and reservation, and in the said State and southern district of New York, was accomplished by the said Press Publishing Company knowingly delivering and causing to be delivered, for perusal by persons residing at the said fort and military post and reservation, a large number of copies, to wit, twenty-nine copies, of the said newspaper, so then and there containing the false, scandalous, malicious and defamatory newspaper article and libel in this count mentioned, at a certain store there situate, to wit, the post exchange, a mercantile concern then and there dealing, amongst other things, in current newspapers; it the said Press Publishing Company then and there well knowing all the premises in this indictment aforesaid, and well knowing the false, scandalous, malicious, and defamatory newspaper article and libel in this count set forth to be, as it then and there was, so printed in each of the said copies of the said newspaper, and well knowing the same to be, and it then and there was, and is, false.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that the said Press Publishing Company then and there, to wit, at the time and place of so composing, writing, printing, and publishing the said false, scandalous, malicious, and defamatory libel as in this count aforesaid, in and by the same did mean and intend to charge, and the same taken as a whole then and there did, and does, mean and charge and convey to a reader thereof the idea, particularly that the said Theodore Roosevelt, in violation of his lawful duty as President of the United States, and the said William Howard Taft, in violation of his lawful duty as Secretary of War and as Cabinet advisor of the President, had, before the event, and before it was known to the public, dishonestly, fraudulently, corruptly, and criminally disclosed to other and unofficial persons, to wit, the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, in order that those persons might make use of the same for their personal ends and profit, and that these persons had in fact dishonestly, fraudulently, corruptly, and criminally accepted and made use of the same for their own personal ends and profit, the information that the Government of the United States was about to acquire and purchase the said property and proprietary rights of the said New Panama Canal Company for the sum of $40,000,000; that the said Theodore Roosevelt and William Howard Taft, in violation of their said duties, had dishonestly, fraudulently, corruptly, and criminally combined with the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, and with others, and the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell had in like manner combined with them the said Theodore Roosevelt and William Howard Taft in a so-called syndicate to acquire the said property and rights of the said New Panama Canal Company at a very low price, to wit, for the sum of $3,500,000.00, in advance of such acquisition and purchase of the same by the United States; that the said syndicate did so acquire the same at such price; that the said Theodore Roosevelt and

William Howard Taft, in violation of their lawful duties as such President and Secretary of War, and for the purpose of concealing the dishonest, fraudulent, corrupt, and criminal transactions charged in the newspaper article and libel in this count mentioned, had obliterated, destroyed, and concealed all official books, documents, and other sources of official and other information bearing upon or recording the said transactions, and had concealed, and were endeavoring to conceal, all traces and evidence of such transactions from the public, and that they had concealed from the convention of the Republican party which assembled at the city of Chicago in the month of June, in the same year nineteen hundred and eight, all knowledge of the said transactions, dishonesty, fraud, corruption, and criminality, and thereby had dishonestly and corruptly promoted the candidacy and nomination of the said William Howard Taft for the office of President of the United States; and, generally, that the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, as principals and as accessories, had engaged in and were suspected of having engaged in unlawful, dishonest, fraudulent, and criminal practices in the nature of conspiracy to defraud the United States and others, bribery of and by United States officers and Members of Congress and of officers of foreign governments, interference with the affairs of foreign governments, and breaches of official and professional trust, in connection with the said acquisition and purchase of the said property and proprietary rights, whereby they secured for themselves without right enormous sums of money from the Treasury of the United States.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said Press Publishing Company, in manner and form and at the time in this count aforesaid, and in a place which had been ceded to and was, and is, under the jurisdiction of the United States, unlawfully did commit the offense of falsely, wickedly, knowingly, maliciously, and scandalously composing, writing, printing, and publishing a criminal libel upon the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, to their great damage, scandal, infamy, and disgrace, to the evil example of all others in like case offending, and against the peace and dignity of the United States contrary to the form of the statute of the same in such case made and provided.

SIXTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the period of time from the fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, Theodore Roosevelt has been President of the United States, while Douglas Robinson was and is a brother-in-law of the said Theodore Roosevelt; that William Howard Taft from the first day of February, in the year nineteen hundred and four, until the thirtieth day of June, in the year nine-

teen hundred and eight, was Secretary of War of the United States, and at the time of the committing, by the defendant hereinafter named, of the offense, in this count of this indictment mentioned, was the Republican candidate and nominee for the office of President of the United States, and Charles P. Taft was a brother of the said William Howard Taft; that William Nelson Cromwell, during all of the said period of time from the said fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, has been and is an attorney and counsellor at law residing and practising his profession in the city of New York, in the State of New York, and has had for one of his clients the Compagnie Nouvelle du Canal de Panama in this count of this indictment hereafter mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that in the year eighteen hundred and eighty-eight, the Compagnie Universelle du Canal Interoceanique de Panama, a corporation (sometimes referred to as the De Lesseps Canal Com-
21 pany, and sometimes as the Old Panama Canal Company) organized under the laws of France, which had acquired certain concessions from the Republic of Colombia to construct a maritime canal across the Isthmus of Panama, had commenced to construct such canal, but had failed to complete the same, became insolvent, and its affairs were placed in the hands of a receiver (in France called a liquidator) pursuant to proceedings to that end in the French courts; that thereafter, in the year eighteen hundred and ninety-four, the property, rights, franchises, and concessions of the said corporation were disposed of by the said liquidator to the Compagnie Nouvelle du Canal de Panama, a joint stock company organized under the laws of France and sometimes called the New Panama Canal Company, which company carried forward the work of constructing the said canal, but not to completion; that after that, and in the year eighteen hundred and ninety-nine, the President of the United States was authorized by law to make an investigation of the Isthmus of Panama with a view to the construction of a canal across the same by the United States, to investigate the available routes for such canal, particularly the Nicaraguan and the Panama routes, with a view to determining what was the most practicable route, to ascertain what rights and franchises were already held by others in that connection, and what work had been done, and, generally, to investigate fully so as to determine the most feasible and practicable route for a canal across the said Isthmus and the cost of constructing the same by the United States, and report the result of his investigations to Congress with his recommendations; that thereafter, in the year nineteen hundred and two, the President of the United States was, by the act of Congress approved June twenty-eight, in that year, "authorized to acquire, for and on behalf of the United States, at a cost not exceeding forty millions of dollars, the rights, privileges, franchises, concessions, grants of land, right of way, unfinished work, plants, and other property, real, personal, and mixed, of every name and nature, owned

by the New Panama Canal Company, of France, on the Isthmus of Panama, and all its maps, plans, drawings, records on the Isthmus of Panama and in Paris, including all the capital stock, not less, however, than sixty-eight thousand, eight hundred and sixty-three shares of the Panama Railroad Company, owned by or held for the use of the said canal company, provided a satisfactory title to all of the said property" could be obtained; and that the said property and proprietary rights were, in fact, thereafter, to wit, in the year nineteen hundred and four, acquired and purchased by the United States for the sum of $40,000,000.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the said period of time in this count first above mentioned there has existed a certain tract of land, consisting of a large number of acres, to wit, two thousand acres, in the county of Orange and in the said State and Southern District of New York, purchased and accepted by the Congress of the United States by the consent of the legislature of the said State of New York, and used by the United States as a fort and military post and reservation under the name of West Point, over which said tract exclusive jurisdiction was, long before the said period and subsequent to such purchase, ceded by the State of New York to, and ever since such cession has been exercised by, the United States, together with exclusive legislation in all cases whatsoever.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the said period of time, to wit, on the sixteenth day of October, in the year nineteen hundred and eight, at and within the said fort and military post and reservation of West Point, and in the said State and Southern District of New York, the said Press Publishing Company, a corporation theretofore organized and then existing and doing business under and by virtue of the laws of the said State of New York, so having composed, written, and printed in the said newspaper the false, scandalous, malicious, and defamatory libels in the first, second, third, and fifth counts of this indictment set forth, and so having published the same, respectively, as in the said first, second, third, and fifth counts charged, again contriving and unlawfully, wickedly, and maliciously intending to injure, vilify, and prejudice the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, and each of them to deprive each of them of his good name, fame, credit, and reputation, expose him to hatred, contempt, ridicule, and obloquy, bring him into great scandal, infamy, and disgrace; to excite, induce, tempt, and cause them, respectively, to commit breaches of the peace and otherwise to stir up disorder among the people unlawfully did falsely, wickedly, knowingly, maliciously, and scandalously compose, write, print, and publish in the said newspaper, to wit, the said newspaper called The World, then owned and published by it, the said Press Publishing Company, and by it, the said Press Publishing Company, circulated throughout the United States and the said Southern District of New York, and particularly in the

said fort and military post and reservation of West Point, as aforesaid; that is to say, in the issue of that newspaper for the day in this count last above mentioned a certain other false, scandalous, malicious, and defamatory libel in the form of a newspaper article then and there containing divers false, scandalous, malicious, and defamatory matters in print of and concerning the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, and of and concerning the said matter of the acquisition and purchase, in the year nineteen hundred and four, by the Government of the United States for the sum of $40,000,000 from the said Compagnie Nouvelle du Canal de Panama of its said property and proprietary rights at the Isthmus of Panama preliminary to the construction by the Government of the United States of the Panama Canal across that Isthmus, which said newspaper article and libel and false, scandalous, malicious, and defamatory matters in print in this count mentioned then and there were and are of the tenor which here follows, that is to say:

22 Who got canal millions known in Washington—Noted lawyer hired by The World to investigate in Paris finds all records have disappeared—Now in possession of Roosevelt government—Documents show who actually got $40,000,000 paid for Panama Canal.

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Paris, Oct. 14.—In an effort to solve the mystery of the identity of those who got the $40,000,000 paid by the United States Government for the Panama Canal, The World retained one of the foremost English corporation lawyers to come here from London and conduct an investigation. He is a member of Parliament, a distinguished member of the Liberal party, and thoroughly versed in the procedure of the French courts, with which he has had long experience. He came here armed with exceptional credentials.

He has just rendered a statement of his findings, which is doubly interesting because of the report that very little of the $40,000,000 went to Frenchmen, but most of it to a syndicate of Americans, including, it is said, Douglas Robinson, brother-in-law of President Roosevelt, and Charles P. Taft, brother of William H. Taft, the candidate for President of the Republican party, and who was Secretary of War in 1904, at the time of the sale of the canal to the United States.

According to this report the American syndicate, confident that William Nelson Cromwell, the New York lawyer, and friend of President Roosevelt and Mr. Taft, would be successful in selling the Panama Canal to the United States, bought up the securities of the canal company at a ridiculously low price compared with the sum paid by the United States Government. Though the form was gone through of sending the $40,000,000 here through the banking house

of J. P. Morgan & Co., instead of French stockholders getting the money, it is believed that most of it was distributed to representatives of the American syndicate members.

The report made by The World's lawyer makes clear the fact that full information of the identity of those who got the $40,000,000 is in possession of the Roosevelt administration in Washington, all records of the payments having been turned over to the United States Government.

In his report the English lawyer retained by The World says:

Company has vanished.

"I have never known, in my lengthy experience of company matters, any public corporation, much less one of such vast importance, having so completely disappeared and removed all traces of its existence as the New Panama Canal Company.

"This company having purchased the assets of the Compagnie Universelle de Panama (the old or De Lesseps Panama Canal Company), brought off the deal with the American Government. So thorough has been its obliteration that only the United States Government can now give information respecting the new company's transactions and the identity of the individuals who created it to effectuate this deal, and who, for reasons best known to themselves, wiped it off the face of the earth when the deal was carried through.

"Under the terms of the agreement

[Continued on third page.]

Washington knows the canal grafters.

[Continued from first page.]

between the United States and the New Panama Canal Company the United States not only took over all the rights of that company on the Isthmus of Panama, but, to quote from the contract, 'the plans and archives at Paris.'

"M. Lemarquis, the official liquidator of the Compagnie Universelle de Panama, which sold its interest to the now vanished company, was seen, but in answer to inquiries, said:

"'I know nothing of the books or transactions of the New Panama Canal Company. I can give no information concerning them, nor do I know anybody who can.'

"Leading French lawyers were also consulted, and they declared there was no machinery, legal or otherwise, by which its records could be brought to light.

Mysterious from the outset.

"A brief account of this company proves how mysterious is its history and how effectual were the precautions taken from its very inception to cover up its tracks.

"The new company, which acquired all the rights of the old company, was formed Dec. 21, 1894, with a capital of 65,000,000 francs, divided into 650,000 shares. Of these 600,000 shares were subscribed for in cash and the remaining 50,000 shares, fully paid, were given the Colombian Government, of which the Panama Isthmus was then a territorial part.

"This stock of the new company was originally registered, so transactions in it could be traced, but power was subsequently obtained to transform it into 'bearer' stock, which passed from hand to hand without any record being preserved.

"The only list available is of the original stockholders, lodged with the Tribunal of Commerce in Paris, but this is worthless, as it fails to show the names of the owners of the stock at the time of the liquidation of the company and who actually received their proportions of the purchase money paid by the United States.

The opportune revolution.

"The extremely opportune Panama revolution relieved the new company of its obligations to Colombia, it being held that sovereignty having passed from Colombia, she was not entitled to compensation for property now possessed by another sovereign state—Panama.

"The money was duly paid over by the United States to the new company, but no record exists here of a single person who received the money or the proportions in which it was paid.

"The liquidation of the new company was finally closed on June 30, last, and the offices of the liquidators were shut. No one is there to give the slightest information concerning it, although questions are still arising necessitating information.

"The American ambassador here was entitled by the agreement to all the archives of the company for his Government, and those archives should include a list of the persons who received the purchase money paid to the United States.

23 "It lies, therefore, in the hands of the Washington authorities to disclose the names of the persons who profited by this gigantic and most suspicious deal."

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said publication of the last-mentioned false, scandalous, malicious, and defamatory libel then and there, to wit, on the said sixteenth day of October, in the year nineteen hundred and eight, at and within the said fort and military post and reservation, and in the said State and Southern District of New York, was accomplished by the said Press Publishing Company knowingly delivering, and causing to be delivered, for perusal by persons residing at the said fort and military post and reservation, a large number of copies, to wit, twenty-nine copies, of the said newspaper, so then and there containing the false, scandalous, malicious, and defamatory newspaper article and libel in this count mentioned, at a certain store

there situate, to wit, the Post Exchange, a mercantile concern then and there dealing, amongst other things, in current newspapers; it, the said Press Publishing Company, then and there well knowing all the premises in this indictment aforesaid, and well knowing the false, scandalous, malicious, and defamatory newspaper article and libel in this count set forth to be, as it then and there was, so printed in each of the said copies of the said newspaper, and well knowing the same to be, as it then and there was, and is, false.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Press Publishing Company then and there, to wit, at the time and place of so composing, writing, printing, and publishing the said false, scandalous, malicious, and defamatory libel as in this count aforesaid, in and by the same did mean and intend to charge, and the same taken as a whole then and there did, and does, mean and charge, and convey to a reader thereof the idea, particularly that the said Theodore Roosevelt, in violation of his lawful duty as President of the United States, and the said William Howard Taft, in violation of his lawful duty as Secretary of War and as Cabinet adviser of the President, had, before the event, and before it was known to the public, dishonestly, fraudulently, corruptly, and criminally disclosed to other unofficial persons, to wit, the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, in order that those persons might make use of the same for their personal ends and profit, and that those persons had in fact dishonestly, fraudulently, corruptly, and criminally accepted and made use of the same for their own personal ends and profit, the information that the Government of the United States was about to acquire and purchase the said property and proprietary rights of the said New Panama Canal Company for the sum of $40,000,000; that the said Theodore Roosevelt and William Howard Taft, in violation of their said duties, had dishonestly, fraudulently, corruptly, and criminally combined with the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, and with others, and the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell had in like manner combined with them the said Theodore Roosevelt and William Howard Taft, in a so-called syndicate, to acquire, and such syndicate had acquired, the said property and rights of the said New Panama Canal Company at a very low price, in advance of the acquisition and purchase of the same by the United States; that the said Theodore Roosevelt and William Howard Taft, in violation of their lawful duties as such President and Secretary of War, and for the purpose of concealing the dishonest, fraudulent, corrupt, and criminal transactions so in this count charged, had obliterated, destroyed, and concealed all official books, documents, and other sources of official and other information bearing upon or recording the said transactions, and had concealed, and were endeavoring to conceal, all traces and evidence of such transactions from the public; and, generally, that the said Theodore Roosevelt, Douglas Robinson, William

Howard Taft, Charles P. Taft, and William Nelson Cromwell, as principals and as accessories, had engaged in and were suspected of having engaged in unlawful, dishonest, fraudulent, and criminal practices in the nature of conspiracy to defraud the United States and others, bribery of and by United States officers and members of Congress and of officers of foreign governments, interference with the affairs of foreign governments, and breaches of official and professional trust, in connection with the said acquisition and purchase of the said property and proprietary rights, whereby they secured for themselves without right enormous sums of money from the Treasury of the United States.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Press Publishing Company, in manner and form and at the time in this count aforesaid, and in a place which had been ceded to and was, and is, under the jurisdiction of the United States, unlawfully did commit the offense of falsely, wickedly, knowingly, maliciously, and scandalously composing, writing, printing, and publishing a criminal libel upon the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell to their great damage, scandal, infamy, and disgrace, to the evil example of all others in like case offending, and against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

[illegible]NTH COUNT.

And the grand jurors [illegible]esaid, upon their oath aforesaid, do further present, that during the period of time from the fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, Theodore Roosevelt has been President of the United States, while Douglas Robinson was and is a brother-in-law of the said Theodore Roosevelt; that William Howard Taft from the first day of February, in the year nineteen hundred and four, until the thirtieth day of June, in the year nineteen hundred and eight, was Secretary of War of the United States, and at the time of the committing by the defendant hereinafter named, of the offense in this count of this indictment mentioned, was the Republican candidate and nominee for the office of President of the United States, and Charles P. Taft was a brother of the said William Howard Taft; that William Nelson Cromwell,
24 during all of the said period of time from the said fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, has been and is an attorney and counsellor at law residing and practising his profession in the city of New York, in the State of New York, and has had for one of his clients the Compagnie Nouvelle du Canal de Panama in this count of this indictment hereafter mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that in the year eighteen hundred and eighty-eight

the Compagnie Universelle du Canal Interoceanique de Panama, a corporation (sometimes referred to as the De Lesseps Canal Company and sometimes as the Old Panama Canal Company) organized under the laws of France, which had acquired certain concessions from the Republic of Colombia to construct a maritime canal across the Isthmus of Panama, had commenced to construct such canal, but had failed to complete the same, became insolvent, and its affairs were placed in the hands of a receiver (in France called a liquidator), pursuant to proceedings to that end in the French courts; that thereafter, in the year eighteen hundred and ninety-four, the property, rights, franchises, and concessions of the said corporation were disposed of by the said liquidator to the Compagnie Nouvelle du Canal de Panama, a joint-stock company organized under the laws of France and sometimes called the New Panama Canal Company, which company carried forward the work of constructing the said canal, but not to completion; that after that, and in the year eighteen hundred and ninety-nine, the President of the United States was authorized by law the make an investigation of the Isthmus of Panama with a view to the construction of a canal across the same by the United States, to investigate the available routes for such canal, particularly the Nicaraguan and the Panama routes, with a view to determining what was the most practicable route, to ascertain what rights and franchises were already held by others in that connection, and what work had been done, and, generally, to investigate fully so as to determine the most feasible and practicable route for a canal across the said Isthmus and the cost of constructing the same by the United States, and report the result of his investigations to Congress with his recommendations; that thereafter, in the year nineteen hundred and two, the President of the United States was, by the act of Congress approved June twenty-eight, in that year, "authorized to acquire, for and on behalf of the United States, at a cost not exceeding forty millions of dollars, the rights, privileges, franchises, concessions, grants of land, right of way, unfinished work, plants, and other property, real, personal, and mixed, of every name and nature, owned by the New Panama Canal Company, of France, on the Isthmus of Panama, and all its maps, plans, drawings, records on the Isthmus of Panama and in Paris, including all the capital stock, not less, however, than sixty-eight thousand eight hundred and sixty-three shares of the Panama Railroad Company, owned by or held for the use of the said canal company, provided a satisfactory title to all of the said property" could be obtained; and that the said property and proprietary rights were, in fact, thereafter, to wit, in the year nineteen hundred and four, acquired and purchased by the United States for the sum of $40,000,000.00.

And the grand jurors aforesaid, upon their oath aforesaid, further present that during the said period of time in this count first above mentioned there has existed a certain tract of land, consisting of a large number of acres, to wit, two thousand acres, in the county of Orange and in the said State and Southern District of New York,

purchased and accepted by the Congress of the United States by the consent of the legislature of the said State of New York, and used by the United States as a fort and military post and reservation, under the name of West Point, over which said tract exclusive jurisdiction was, long before the said period and subsequent to such purchase, cede by the State of New York to, and ever since such cession has been exercised by, the United States, together with exclusive legislation in all cases whatsoever.

And the grand jurors aforesaid, upon their oath aforesaid, further present that during the said period of time, to wit, on the nineteenth day of October, in the year nineteen hundred and eight, at and within the said fort and military post and reservation of West Point, and in the said State and Southern District of New York, the said Press Publishing Company, a corporation theretofore organized and then existing and doing business under and by virtue of the laws of the said State of New York, so having composed, written, and printed in the said newspaper the false, scandalous, malicious, and defamatory libels in the first, second, third, fifth, and sixth counts of this indictment set forth, and so having published the same, respectively, as in the said first, second, third, fifth, and sixth counts charged, again contriving and unlawfully, wickedly, and maliciously intending to injure, vilify, and prejudice the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell and each of them, to deprive each of them of his good name, fame, credit, and reputation, expose him to hatred, contempt, ridicule, and obloquy, bring him into great scandal, infamy, and disgrace, to excite, induce, tempt, and cause them, respectively, to commit breaches of the peace, and otherwise to stir up disorder among the people, unlawfully did falsely, wickedly, maliciously, and scandalously compose, write, print, and publish, in the said newspaper, to wit, the said newspaper called The World, then owned and published by it, the said Press Publishing Company, and by it, the said Press Publishing Company, circulated throughout the United States and the said Southern District of New York, and particularly in the said fort and military post and reservation of West Point, as aforesaid, that is to say, in the issue of that newspaper for the day in this count last above mentioned, a certain other false, scandalous, malicious, and defamatory libel in the form of a newspaper article then and there containing divers false, scandalous, malicious, and defamatory matters in print of and concerning the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, and of and concerning the said matter of the acquisition and purchase, in the year nineteen hundred and four, by the Government of the United States, for the sum of $40,000,000.00, from the said Compagnie Nouvelle du Canal de Panama, of its said property and proprietary rights at the Isthmus of Panama, preliminary to the construction by the Government of the United States of the Panama Canal across that Isthmus; which said newspaper article and libel and false, scandalous, malicious, and

defamatory matters in print in this count mentioned then and there were, and are, of the tenor following, that is to say:

List of shares in canal millions can not be found—Records turned over to Roosevelt administration by the French Panama Company showing receipts for $40,000,000 may have been destroyed is Washington rumor—The World's efforts to examine them futile—History of the legislation authorizing purchase and construction of the Isthmian waterway presents some remarkable chapters only now coming to light.

Efforts by the World to obtain from government officials in Washington the records turned over by the New Panama Canal Company, showing who got the $40,000,000 paid by the United States for the canal have so far been unavailing. There are unofficial rumors that those portions of the records containing the names of the actual recipients of the $40,000,000 have been destroyed.

If this is so, it will be impossible to officially ascertain the names of the members of the American syndicate who are supposed to have bought up the securities of the canal company at very low prices from the French holders, confident that William Nelson Cromwell, because of his extraordinary influence with President Roosevelt and the then Secretary of War, William H. Taft, would succeed in unloading the canal on the United States at a fancy figure which would give the syndicate a huge profit.

Say Sheldon was in.

It was stated yesterday that an alleged member of the syndicate was George R. Sheldon, the banker, of No. 2 Wall street, who is treasurer of the Republican national committee and is collecting campaign funds in behalf of Mr. Taft. The appointment of Mr. Sheldon as treasurer of the committee was dictated by William Nelson Cromwell, who sold the canal to the United States and who is the directing head behind the throne of the Taft campaign. Mr. Cromwell is E. H. Harriman's lawyer. Mr. Taft had selected Representative McKinley as his campaign treasurer, and when Mr. Cromwell learned of this he telegraphed Mr. Taft, who was then at Hot Springs, to withhold the appointment until he could see him.

Mr. Cromwell reached Hot Springs the following day, and the same day Mr. Sheldon's appointment as treasurer of the Republican national committee was announced.

Mr. Cromwell and Mr. Sheldon are directors in some of the same corporations. Mr. Sheldon is the representative of J. Pierpont Morgan in several corporations and is regarded as a Morgan man in the Wall street district.

Mr. Cromwell is on record before the Interoceanic Canal Committee of the United States Senate as having sworn he did not make a penny of profit out of the $40,000,000 sale outside of his fee as counsel for the French-Panama Canal Company. Search has failed to reveal

any record of his having sworn that Americans did not share in the $40,000,000 paid by this Government supposedly to the French holders of the French Canal Company.

Financing of the scheme.

According to information obtained by the World yesterday, the members of the American syndicate found it necessary to raise a fund of only $3,000,000 to get a substantial share of the securities of the French company. There was also a large subscription to the Republican national campaign fund by which it is said the support of the late Senator Mark Hanna was won over to the Panama route as against the Nicaragua route, which many engineers conceived to be more feasible and cheaper. Senator Hanna was at that time the most influential member of the United States Senate, and he is credited with having won over the requisite number of Senators to practically commit the Government to the route which Mr. Cromwell had for sale and by which the American syndicate expected to reap a big profit.

Mr. Cromwell as the selling agent of the canal was not idle at this time. He had a literary bureau at work, and it is said checks were sent every month to 225 newspapers in the interior of the country in payment for printing the product of the literary bureau. All of this product was to show the advantages of the Panama route over the Nicaraguan route and to build up a public sentiment in favor of the former.

Then the Spooner act was passed, with the assistance of Senator Hanna and the Senators whom he rounded up to its support following the big contribution to the Republican campaign funds of 1900.

The Spooner act is a marvelously drawn statute. Many persons familiar with Mr. Cromwell's adroitness in phrase making and hiding stupendous powers behind seemingly harmless authorizations declare that Mr. Cromwell himself drew up the Spooner act. It committed the Nation to building an interoceanic canal by the Panama route, providing a clear title and concessions could be obtained, the cost of construction to be $135,000,000. Extraordinary features were the powers it conferred upon the President.

William McKinley was then President of the United States. A man familiar with what went on at that time within the Panama ring said yesterday that had Mr. Roosevelt been President the men who had the Spooner act phrased as it was would have hesitated to place such sweeping powers in the hands of the President, notwithstanding their intense desire to sell the Panama Canal to the Government and the big profits such a transaction meant to them.

Powers of the President.

The Spooner act makes the President absolute dictator of the whole canal building enterprise. He can change the commissions and the engineers at will.

Some of the Senators who favored the Nicaraguan route voted for the Spooner bill, believing it would be impossible for the advocates of the Panama route to get a clear title and the necessary concessions from the Government of Colombia, of which the canal was then a territorial part. As the spooner act committed the Government to building an Isthmian canal, these Senators were confi-
26 dent the Nicaraguan route would have to be taken in the end.

Mr. Cromwell fooled those Senators. Failing to get what was needed from Colombia in the way of concessions to give the clear title demanded by the Spooner Act, he manufactured the revolution which took the Isthmus away from Colombia and created the Republic of Panama. He promised the revolutionists that United States war ships would be on hand when wanted, and they were there to the dot. That Mr. Cromwell had the assistance of President Roosevelt, Secretary Taft and other high officials of the Roosevelt administration in making a success of the revolution, which deprived the little Government of Colombia of a very valuable part of its territory, has never been effectively disproved.

The ready-made Republic of Panama appointed Mr. Cromwell its legal adviser, and he saw to it that it gave the United States everything it wanted in the way of canal concessions. Then the sale of the canal for $40,000,000 was rushed through and the money was turned over in May, 1904, to J. P. Morgan & Co., ostensibly for transmission to France to the French Panama Canal Company for distribution to the stockholders.

Contributed to the revolution.

That Mr. Cromwell contributed funds to the revolutionary party in Panama was admitted by Mr. Cromwell himself, and in the presence of Secretary of War Taft. This admission was made, it was learned yesterday, at a banquet given on the Isthmus in December, 1904. Mr. Cromwell and Secretary Taft were guests at the dinner, also the leading officials of the Republic. In his speech Cromwell referred to a provision of the constitution of Panama which gave all financial contributors to the revolution the right to citizenship. Cromwell declared he had contributed largely to the revolutionists' treasury and was therefore entitled to citizenship.

The World's informant stated it was well known on the Isthmus that the money given to the revolutionary party was used to bribe the 300 Colombian soldiers on duty in Panama on the day of the revolution, so they would do no fighting and make the revolution a bloodless one. In other words, the money thus contributed was used to make the soldiers traitors to their country.

By those who know the inner secrets of canal affairs it is declared that the lock system was forced upon the country by President Roosevelt in the face of a report recommending a sea level canal, made by a majority of the engineers who were appointed to determine that important matter. A lock system or high level canal was favored in a minority report.

The sea level canal would have cost $300,000,000 to build, whereas the report of the minority, who recommended the lock system, declared it could be built within the $135,000,000 stipulated by the Spooner Act. It was pointed out to President Roosevelt by Mr. Cromwell that if the $300,000,000 sea-level plan was decided upon the Spooner Act would have to be resubmitted to Congress, and another Congress, in drawing up a new canal law, would never give him the extraordinary powers which the Spooner Act conferred upon the President when William McKinley held that office.

The power of Mr. Cromwell in canal affairs at this time and throughout Mr. Taft's term as Secretary of War was deemed strange. Though he was merely counsel for the Panama Republic and its fiscal agent and otherwise a corporation lawyer and private citizen holding no official position under the United States Government, he was really the chief power in canal affairs, and possibly may still be.

Mr. Cromwell's power was defined by Secretary Taft himself in the statement he made following the resignation of John F. Wallace as chief engineer of the canal in June, 1905. In a formal statement explaining why Mr. Cromwell was present when Mr. Wallace insisted upon a private interview with the Secretary of War, Mr. Taft said:

Mr. Cromwell for some time had been charged by the President and Secretary of War with general advisory duties in all Panama canal affairs.

Though President Roosevelt and Secretary Taft berated Mr. Wallace publicly for resigning, charging him with deserting an important Government post for a higher salary offered by a private corporation, it is known that Mr. Wallace's real reason for resigning was his refusal "to be a tool of Cromwell" in canal matters. Holding no official position and being responsible to nobody, it is said that Mr. Cromwell's word was law in all matters pertaining to the canal, by reason of the strange confidence reposed in him by the President and Secretary of War.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that the said publication of the last-mentioned false, scandalous, malicious and defamatory libel then and there, to wit, on the said nineteenth day of October, in the year nineteen hundred and eight, at and within the said fort and military post and reservation, and in the said State and Southern District of New York, was accomplished by the said Press Publishing Company knowingly delivering and causing to be delivered, for perusal by persons residing at the said fort and military post and reservation, a large number of copies, to wit, twenty-nine copies, of the said newspaper, so then and there containing the false, scandalous, malicious and defamatory newspaper article and libel in this count mentioned, at a certain store there situate, to wit, the Post Exchange, a mercantile concern then and there dealing, amongst other things, in current newspapers; it the said Press Publishing Company then and there well knowing all the premises in this indictment aforesaid, and well knowing the

false, scandalous, malicious and defamatory article and libel in this count set forth to be, as it then and there was, so printed in each of the said copies of the said newspaper, and well knowing the same to be, as it then and there was, and is, false.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Press Publishing Company then and there, to wit, at the time and place of so composing, writing, printing, and publishing the said false, scandalous, malicious, and defamatory libel in this count aforesaid, in and by the same did mean and intend to charge, and the same taken as a whole then and there
27 did, and does, mean and charge, and convey to a reader thereof the idea, particularly that the said Theodore Roosevelt, in violation of his lawful duty as President of the United States, and the said William Howard Taft, in violation of his lawful duty as Secretary of War and as Cabinet adviser of the President, had, before the event, and before it was known to the public, dishonestly, fraudulently, corruptly, and criminally disclosed to other and unofficial persons, to wit, the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, in order that those persons might make use of the same for their own personal ends and profit, and that those persons had in fact dishonestly, fraudulently, corruptly, and criminally accepted and made use of the same for their own personal ends and profit, the information that the Government of the United States was about to acquire and purchase the said property and proprietary rights of the said New Panama Canal Company; that the said Theodore Roosevelt and the said William Howard Taft, in violation of their said duties, had dishonestly, fraudulently, corruptly, and criminally combined with the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, and with others, and the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell had in like manner combined with them the said Theodore Roosevelt and William Howard Taft in a so-called syndicate, to acquire the said property and rights of the said New Panama Canal Company at a very low price, to wit, for the sum of $3,000,000.00, in advance of the acquisition and purchase of the same by the United States for the sum of $40,000,000.00; that the said syndicate did so acquire the same at such price, and had thereby secured an enormous profit; that the said Theodore Roosevelt and William Howard Taft, as such President and Secretary respectively, had dishonestly, fraudulently, corruptly, and criminally urged upon the Congress of the United States, and procured the necessary legislation for acquiring and purchasing the said property and rights for the sum of $40,000,000.00; that the said Theodore Roosevelt and William Howard Taft, in violation of their said lawful duties, and for the purpose of concealing the dishonest, fraudulent, corrupt, and criminal transactions so in this count charged, had obliterated, destroyed, and concealed all official books, documents, and other sources of official and other information bearing upon or recording the said transactions, and had concealed, and were endeavoring to conceal, all traces and evidence

of such transactions from the public; and, generally, that the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, as principals and as accessories, had engaged in, and were suspected of having engaged in, unlawful, dishonest, fraudulent, and criminal practices in the nature of conspiracy to defraud the United States and others, bribery of and by United States officers and Members of Congress and of officers of foreign governments, interference with the affairs of foreign governments, and breaches of official and professional trust, in connection with the said acquisition and purchase of the said property and proprietary rights, whereby they secured for themselves without right enormous sums of money from the Treasury of the United States.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said Press Publishing Company, in manner and form and at the time in this count aforesaid, and in a place which had been ceded to and was, and is, under the jurisdiction of the United States, unlawfully did commit the offense of falsely, wickedly, knowingly, maliciously, and scandalously composing, writing, printing and publishing a criminal libel upon the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, to their great damage, scandal, infamy, and disgrace, to the evil example of all others in like case offending, and against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

EIGHTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period of time from the fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, Theodore Roosevelt has been President of the United States, while Douglas Robinson was and is a brother-in-law of the said Theodore Roosevelt; that William Howard Taft, from the first day of February, in the year nineteen hundred and four, until the thirtieth day of June, in the year nineteen hundred and eight, was Secretary of War of the United States, and at the time of the committing, by the defendant hereinafter named, of the offense in this count of this indictment mentioned, was the Republican candidate and nominee for the office of President of the United States, and Charles P. Taft was a brother of the said William Howard Taft; that William Nelson Cromwell, during all of the said period of time from the said fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, has been and is an attorney and counsellor at law residing and practicing his profession in the city of New York, in the State of New York, and has had for one of his clients the Compagnie Nouvelle du Canal de Panama, in this count of this indictment hereafter mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in the year eighteen hundred and eighty-eight, the Compagnie Universelle du Canal Interoceanique de Panama, a corporation (sometimes referred to as the De Lesseps Canal Company and sometimes as the Old Panama Canal Company), organized under the laws of France, which had acquired certain concessions from the Republic of Colombia to construct a maritime canal across the Isthmus of Panama, had commenced to construct such canal, but had failed to complete the same, became insolvent, and its affairs were placed in the hands of a receiver (in France called a liquidator) pursuant to proceedings to that end in the French courts; that thereafter, in the year eighteen hundred and ninety-four, the property, rights, franchises, and concessions of the said corporation were
28 disposed of by the said liquidator to the Compagnie Nouvelle du Canal de Panama, a joint-stock company organized under the laws of France and sometimes called the New Panama Canal Company, which company carried forward the work of constructing the said canal, but not to completion; that after that, and in the year eighteen hundred and ninety-nine, the President of the United States was authorized by law to make an investigation of the Isthmus of Panama with a view to the construction of a canal across the same by the United States, and to investigate the available routes for such canal, particularly the Nicaraguan and the Panama routes, with a view to determining what was the most practicable route, to ascertain what rights and franchises were already held by others in that connection, and what work had been done, and, generally, to investigate fully so as to determine the most feasible and practicable route for a canal across the said isthmus and the cost of constructing the same by the United States, and report the result of his investigations to Congress with his recommendations; that thereafter, in the year nineteen hundred and two, the President of the United States was, by the act of Congress approved June twenty-eight, in that year, "authorized to acquire, for and on behalf of the United States, at a cost not exceeding forty millions of dollars, the rights, privileges, franchises, concessions, grants of land, right of way, unfinished work plants, and other property, real, personal, and mixed, of every name and nature, owned by the New Panama Canal Company, of France, on the Isthmus of Panama, and all its maps, plans, drawings, records on the Isthmus of Panama and in Paris, including all the capital stock, not less, however, than sixty-eight thousand eight hundred and sixty-three shares of the Panama Railroad Company, owned by or held for the use of the said canal company, provided a satisfactory title to all of the said property" could be obtained; and that the said property and proprietary rights were, in fact, thereafter, to wit, in the year nineteen hundred and four, acquired and purchased by the United States for the sum of $40,000,000.00.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the said period of time in this count of this indictment first above mentioned there has existed a certain tract of

land in the Borough of Manhattan, in the city of New York, in the said State and southern district of New York, purchased and accepted by the Congress of the United States by the consent of the legislature of the said State of New York, whereon has stood a needful building used by the United States as a post-office, over which said tract exclusive jurisdiction was, long before the said period and subsequent to such purchase, ceded by the State of New York to, and ever since such cession has been exercised by, the United States, together with exclusive legislation in all cases whatsoever; which said tract of land in this count of this indictment mentioned is one bounded by Broadway, Park Place, and Mail street in the said borough.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the said period of time, to wit, on the third day of October, in the year nineteen hundred and eight, at and within the said post-office building, in the said State and southern district of New York, the Press Publishing Company, a corporation theretofore organized and then existing and doing business under and by virtue of the laws of the said State of New York, contriving and unlawfully, wickedly, and maliciously intending to injure, vilify, and prejudice the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell and each of them, to deprive each of them of his good name, fame, credit, and reputation, expose him to hatred, contempt, ridicule, and obloquy, bring him into great scandal, infamy, and disgrace, to excite, induce, tempt, and cause them, respectively, to commit breaches of the peace, and otherwise to stir up disorder among the people, unlawfully did falsely, wickedly, knowingly, maliciously, and scandalously compose, write, print, and publish, in a certain newspaper, to wit, a newspaper called The World, then owned and published by the said Press Publishing Company, and circulating throughout the United States and the said southern district of New York, and particularly in the said post-office building, that is to say, in the issues of that newspaper for the day in this count last above mentioned, a certain other false, scandalous, malicious, and defamatory libel in the form of a newspaper article then and there containing divers false, scandalous, malicious, and defamatory matters in print of and concerning the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, and of and concerning the matter of the purchase, in the year nineteen hundred and four, by the Government of the United States, for the sum of $40,000,000.00, from the said Compagnie Nouvelle du Canal de Panama, of its property and proprietary rights at the Isthmus of Panama, preliminary to the construction by the Government of the United States of the Panama Canal across that isthmus; which said newspaper article and libel, and false, scandalous, malicious, and defamatory matters in print in this count referred to, then and there were, and are, of the same tenor as the newspaper article set forth in full in the first count of this indictment.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said publication, at the time and place in this count of this indictment mentioned, of the false, scandalous, malicious, and defamatory libel in this count referred to then and there was accomplished by the said Press Publishing Company knowingly delivering by mail of the United States, and causing to be delivered, to one Walter S. Mayer, post-office inspector in charge, at his office in room 106 of the said post-office building, a copy of the said newspaper, so then and there containing the last-mentioned false, scandalous, malicious, and defamatory newspaper article and libel, which said newspaper article and libel was thereupon there received by the said Walter S. Mayer and there, to wit, in the said post-office building, by him read and understood; it the said Press Publishing Company then and there well knowing all the premises in this indictment aforesaid,

29 and well knowing the said false, malicious, scandalous, and defamatory newspaper article and libel mentioned in this count to be printed in the said copy of the said newspaper so delivered and caused to be delivered to the said Walter S. Mayer, and well knowing the same to be, as it then and there was, and is, false.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Press Publishing Company, a corporation as aforesaid, then and there, to wit, at the time and place of so composing, writing, printing, and publishing the said false, scandalous, malicious, and defamatory newspaper article and libel as in this count charged, in and by the same did mean and intend to charge, and the same taken as a whole then and there did, and does, mean and charge, and convey to a reader thereof the idea, particularly, that the said Theodore Roosevelt, in violation of his lawful duty as President of the United States, and the said William Howard Taft, in violation of his lawful duty as Secretary of War and as cabinet adviser of the President, had, before the event, and before it was known to the public, dishonestly, fraudulently, corruptly, and criminally disclosed to other and unofficial persons, to wit, the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, in order that those persons might make use of the same for their own personal ends and profit, and that those persons had in fact dishonestly, fraudulently, corruptly, and criminally accepted and made use of the same for their own personal ends and profit, to wit, a profit amounting to the sum of $36,500,000.00, the information that the Government of the United States was about to acquire and purchase the said property and proprietary rights of the said New Panama Canal Company; and, generally, that the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, as principals and as accessories, had engaged in, and were suspected of having engaged in, unlawful, dishonest, fraudulent, and criminal practices in the nature of conspiracy to defraud the United States and others, bribery of and by United States officers and Members of Congress and of officers of foreign governments, interference with the affairs of foreign governments, and breaches of official and

professional trust, in connection with the said acquisition and purchase of the said property and proprietary rights, whereby they secured for themselves without right enormous sums of money from the Treasury of the United States.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Press Publishing Company, in manner and form and at the time in this count of this indictment aforesaid, and in a place which had been ceded to and was, and is, under the jurisdiction of the United States, unlawfully did commit the offense of falsely, wickedly, knowingly, maliciously, and scandalously composing, writing, printing, and publishing a certain criminal libel upon the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, to their great damage, scandal, infamy, and disgrace, to the evil example of all others in like case offending, and against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

NINTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period of time from the fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, Theodore Roosevelt has been President of the United States, while Douglas Robinson was and is a brother-in-law of the said Theodore Roosevelt; that William Howard Taft from the first day of February, in the year nineteen hundred and four, until the thirtieth day of June, in the year nineteen hundred and eight, was Secretary of War of the United States, and at the time of the committing, by the defendant hereinafter named, of the offense in this count of this indictment mentioned, was the Republican candidate and nominee for the office of President of the United States, and Charles P. Taft was a brother of the said William Howard Taft; that William Nelson Cromwell, during all of the said period of time from the said fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, has been and is an attorney and counsellor at law residing and practising his profession in the city of New York, in the State of New York, and had had for one of his clients the Compagnie Nouvelle du Canal de Panama in this count of this indictment hereafter mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in the year eighteen hundred and eighty-eight, the Compagnie Universelle du Canal Interoceanique de Panama, a corporation (sometimes referred to as the De Lesseps Canal Company and sometimes as the Old Panama Canal Company), organized under the laws of France, which had acquired certain concessions from the Republic of Colombia to construct a maritime canal across the Isthmus of Panama, had commenced to construct such canal, but

had failed to complete the same, became insolvent, and its affairs were placed in the hands of a receiver (in France called a liquidator), pursuant to proceedings to that end in the French courts; that thereafter, in the year eighteen hundred and ninety-four, the property, rights, franchises, and concessions of the said corporation were disposed of by the said liquidator to the Compagnie Nouvelle du Canal de Panama, a joint stock company organized under the laws of France and sometimes called the New Panama Canal Company, which company carried forward the work of constructing the said canal, but not to completion; that after that, and in the year eighteen hundred and ninety-nine, the President of the United States was authorized by law to make an investigation of the Isthmus of Panama with a view to the construction of a canal across the same by the United States, to investigate the available routes for such canal, particularly the Nicaraguan and the Panama routes, with a view to determining what was the most practicable route, to ascertain what rights and franchises were already held by others in that connection, and what work had been done, and, generally, to investigate fully so as to determine the most feasible and practicable route for a canal across the said isthmus and the cost of constructing the same by the United States, and report the result of his investigations to Congress with his recommendations; that thereafter, in the year nineteen hundred and two, the President of the United States was, by the act of Congress approved June twenty-eight, in that year, "authorized to acquire for and on behalf of the United States, at a cost not exceeding forty millions of dollars, the rights, privileges, franchises, concessions, grants of land, right of way, unfinished work, plants, and other property, real, personal, and mixed, of every name and nature, owned by the New Panama Canal Company, of France, on the Isthmus of Panama, and all its maps, plans, drawings, records on the Isthmus of Panama and in Paris, including all the capital stock, not less, however, than sixty-eight thousand eight hundred and sixty-three shares of the Panama Railroad Company, owned by or held for the use of the said canal company, provided a satisfactory title to all of the said property" could be obtained; and that the said property and proprietary rights were, in fact, thereafter, to wit, in the year nineteen hundred and four, acquired and purchased by the United States for the sum of $40,000,000.00.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the said period of time in this count of this indictment first above mentioned there has existed a certain tract of land in the Borough of Manhattan, in the city of New York, and in the said State and Southern District of New York, purchased and accepted by the Congress of the United States by the consent of the legislature of the said State of New York, whereon has stood a needful building used by the United States as a post-office, over which said tract exclusive jurisdiction was, long before the said period and subsequent to such purchase, ceded by the State of New York, and ever since such cession has been exercised by the United States,

together with exclusive legislation in all cases whatsoever; which said tract of land in this count of this indictment mentioned is one bounded by Broadway, Park place, and Mail street in the said borough.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the said period of time, to wit, on the fourth day of October, in the year nineteen hundred and eight, at and within the said post-office building, and in the said State and Southern District of New York, the Press Publishing Company, a corporation theretofore organized and then existing and doing business under and by virtue of the laws of the said State of New York, so having composed, written, and printed in the said newspaper the false, scandalous, malicious, and defamatory libel in the eighth count of this indictment referred to, and so having published the same as in the said eighth count charged, again contriving and unlawfully, wickedly, and maliciously intending to injure, vilify, and prejudice the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, and each of them, to deprive each of them of his good name, fame, credit, and reputation, expose him to hatred, contempt, ridicule, and obloquy, bring him into great scandal, infamy, and disgrace, to excite, induce, tempt, and cause them, respectively, to commit breaches of the peace, and otherwise to stir up disorder among the people, unlawfully did falsely, wickedly, knowingly, maliciously, and scandalously compose, write, print, and publish, in a certain newspaper, to wit, a newspaper called The World, then owned and published by the said Press Publishing Company, and circulating throughout the United States and the said Southern District of New York, and particularly in the said post-office building, that is to say, in the issue of that newspaper for the day in this count last above mentioned, a certain other false, scandalous, malicious, and defamatory libel in the form of a newspaper article then and there containing divers false, scandalous, malicious, and defamatory matters in print of and concerning the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, and of and concerning the matter of the purchase, in the year nineteen hundred and four, by the Government of the United States, for the sum of $40,000,000.00, from the said Compagnie Nouvelle du Canal de Panama, of its property and proprietary rights at the Isthmus of Panama, preliminary to the construction by the Government of the United States of the Panama Canal across that isthmus; which said newspaper article and libel, and false, scandalous, malicious, and defamatory matters in print in this count referred to, then and there were, and are, of the same tenor as the newspaper article set forth in full in the second count of this indictment.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said publication, at the time and place in this count of this indictment mentioned, of the false, scandalous, malicious, and defamatory libel in this count referred to them and there was accomplished by the said Press Publishing Company know-

ingly delivering by mail of the United States, and causing to be delivered, to one Walter S. Mayer, post-office inspector in charge, at his office, in Room 106, of the said post-office building, a copy of the said newspaper, so then and there containing the last mentioned false, scandalous, malicious, and defamatory newspaper article and libel, which said newspaper article and libel was thereupon there received by the said Walter S. Mayer, and there, to wit, in the said post-office building, by him read and understood; it the said Press Publishing Company then and there well knowing all the premises in this indictment aforesaid, and well knowing the said false, malicious, scandalous, and defamatory newspaper article and libel mentioned in this count to be printed in the said copy of the said newspaper so delivered and caused to be delivered to the said Walter S. Mayer, and well knowing the same to be, as it then and there was, and is, false.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Press Publishing Company, corporation as aforesaid, then and there, to wit, at the time and place of so composing, writing, printing, and publishing the said false, scandalous, malicious, and defamatory newspaper article and libel, as in this count charged, in and by the same did mean and intend to charge, and the same taken as a whole then and there did, and does, mean and charge, and convey to a reader thereof the idea, particularly
31 that the said Theodore Roosevelt, in violation of his lawful duty as President of the United States, and the said William Howard Taft, in violation of his lawful duty as Secretary of War and as cabinet adviser of the President, had, before the event, and before it was known to the public, dishonestly, fraudulently, corruptly, and criminally disclosed to other and unofficial persons, to wit, the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, in order that those persons might make use of the same for their own personal ends and profit, and that those persons had, in fact, dishonestly, fraudulently, corruptly, and criminally accepted and made use of the same for their own personal ends and profit, the information that the Government of the United States was about to acquire and purchase the said property and proprietary rights of the said New Panama Canal Company for the sum of $40,000,000.00—and had thereby secured for the said persons an enormous profit—and generally, that the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, as principals and as accessories, had engaged in, and were suspected of having engaged in, unlawful, dishonest, fraudulent, and criminal practices in the nature of conspiracy to defraud the United States and others, bribery of and by United States officers and Members of Congress and of officers of foreign governments, interference with the affairs of foreign governments, and breaches of official and professional trust, in connection with the said acquisition and purchase of the said property and proprietary rights, whereby they secured for themselves without right enormous sums of money from the Treasury of the United States.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Press Publishing Company, in manner and form and at the time in this count of this indictment aforesaid, and in a place which had been ceded to and was, and is, under the jurisdiction of the United States, unlawfully did commit the offense of falsely, wickedly, knowingly, maliciously, and scandalously composing, writing, printing, and publishing a criminal libel upon the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, to their great damage, scandal, infamy, and disgrace, to the evil example of all others in like case offending, and against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

TENTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period of time from the fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, Theodore Roosevelt has been President of the United States, while Douglas Robinson was and is a brother-in-law of the said Theodore Roosevelt; that William Howard Taft, from the first day of February, in the year nineteen hundred and four, until the thirtieth day of June, in the year nineteen hundred and eight, was Secretary of War of the United States, and at the time of the committing, by the defendant hereinafter named, of the offense in this count of this indictment mentioned, was the Republican candidate and nominee for the office of President of the United States, and Charles P. Taft was a brother of the said William Howard Taft; that William Nelson Cromwell, during all of the said period of time from the said fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, has been and is an attorney and counsellor at law residing and practising his profession in the city of New York, in the State of New York, and has had for one of his clients the Compagnie Nouvelle du Canal de Panama, in this count of this indictment hereafter mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in the year eighteen hundred and eighty-eight, the Compagnie Universelle du Canal Interoceanique de Panama, a corporation (sometimes referred to as the De Lesseps Canal Company and sometimes as the Old Panama Canal Company), organized under the laws of France, which had acquired certain concessions from the Republic of Colombia to construct a maritime canal across the Isthmus of Panama, had commenced to construct such canal, but had failed to complete the same, became insolvent, and its affairs were placed in the hands of a receiver (in France called a liquidator), pursuant to proceedings to that end in the French courts; that thereafter, in the year eighteen hundred and ninety-four, the property, rights, franchises, and concessions of the said corporation were dis-

posed of by the said liquidator to the Compagnie Nouvelle du Canal de Panama, a joint-stock company organized under the laws of France and sometimes called the New Panama Canal Company, which company carried forward the work of constructing the said canal, but not to completion; that after that, and in the year eighteen hundred and ninety-nine, the President of the United States was authorized by law to make an investigation of the Isthmus of Panama with a view to the construction of a canal across the same by the United States, to investigate the available routes for such canal, particularly the Nicaraguan and the Panama routes, with a view to determining what was the most practicable route, to ascertain what rights and franchises were already held by others in that connection, and what work had been done; and, generally, to investigate fully, so as to determine the most feasible and practicable route for a canal across the said isthmus and the cost of constructing the same by the United States, and report the result of his investigations to Congress with his recommendations; that thereafter, in the year nineteen hundred and two, the President of the United States was, by the act of Congress approved June twenty-eight, in that year, "authorized to acquire, for and on behalf of the United States, at a cost not exceeding forty millions of dollars, the rights, privileges, franchises, concessions, grants of land, right of way, unfinished work, plants, and other property, real, personal, and mixed, of every name and nature, owned by the New Panama Canal Company, of France, on the Isthmus of Panama, and all its maps, plans, drawings, records on the Isthmus of Panama and in Paris, including all the capital stock, not less, however, than sixty-eight thousand eight hundred and sixty-three shares of the Panama Railroad Company, owned
32 by or held for the use of the said canal company, provided a satisfactory title to all of the said property" could be obtained; and that the said property and proprietary rights were, in fact, thereafter, to wit, in the year nineteen hundred and four, acquired and purchased by the United States for the sum of $40,000,000.00.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the said period of time in this count of this indictment first above mentioned there has existed a certain tract of land in the borough of Manhattan, in the city of New York, and in the said State and Southern District of New York, purchased and accepted by the Congress of the United States by the consent of the legislature of the said State of New York, whereon has stood a needful building used by the United States as a post-office, over which said tract exclusive jurisdiction was, long before the said period and subsequent to such purcase, ceded by the State of New York to, and ever since such cession has been exercised by, the United States, together with exclusive legislation in all cases whatsoever; which said tract of land in this count of this indictment mentioned is one bounded by Broadway, Park Row, and Mail street, in the said borough.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the said period of time, to wit, on the seventh day of October, in the year nineteen hundred and eight, at and within the said post-office building, and in the said State and Southern District of New York, the said Press Publishing Company, a corporation theretofore organized and then existing and doing business under and by virtue of the laws of the said State of New York, so having composed, written, and printed in the said newspaper the false, scandalous, malicious, and defamatory libels in the eighth and ninth counts of this indictment referred to, and so having published the same as in the said eighth and ninth counts charged, again contriving and unlawfully, wickedly, and maliciously intending to injure, vilify, and prejudice the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell and each of them, to deprive each of them of his good name, fame, credit, and reputation, expose him to hatred, contempt, ridicule, and obloquy, bring him into great scandal, infamy, and disgrace, to excite, induce, tempt, and cause them respectfully to commit breaches of the peace, and otherwise to stir up disorder among the people, unlawfully did falsely, wickedly, knowingly, maliciously, and scandalously compose, write, print, and publish, in a certain newspaper, to wit, a newspaper called The World, then owned and published by the said Press Publishing Company and by the said Press Publishing Company circulated throughout the United States and the said Southern District of New York, and particularly in the said post-office building; that is to say, in the issue of that newspaper for the day in this count last above mentioned, a certain other false, scandalous, malicious, and defamatory libel in the form of a newspaper article then and there containing divers false, scandalous, malicious, and defamatory matters in print of and concerning the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, and of and concerning the matter of the purchase, in the year nineteen hundred and four, by the Government of the United States, for the sum of $40,000,000.00, from the said Compagnie Nouvelle du Canal de Panama, of its property and proprietary rights at the Isthmus of Panama, preliminary to the construction by the Government of the United States of the Panama Canal across that isthmus; which said newspaper article and libel, and false, scandalous, malicious, and defamatory matters in print in this count referred to, then and there were, and are, of the same tenor as the newspaper article set forth in full in the third count of this indictment.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that the said publication, at the time and place in this count of this indictment mentioned, of the false, scandalous, malicious, and defamatory libel in this count referred to then and there was accomplished by the said Press Publishing Company knowingly delivering by mail of the United States, and causing to be delivered, to one Walter S. Mayer, post-office inspector in charge, at his office

in room 106 of the said post-office building, a copy of the said newspaper, so then and there containing the last-mentioned false, scandalous, malicious, and defamatory newspaper article and libel, which said newspaper article and libel was thereupon there received by the said Walter S. Mayer, and there, to wit, in the said post-office building, by him read and understood; it, the said Press Publishing Company, then and there well knowing all the premises in this indictment aforesaid, and well knowing the said false, scandalous, malicious, and defamatory article mentioned in this count to be printed in the said copy of the said newspaper so delivered and caused to be delivered to the said Walter S. Mayer, and well knowing the same to be, as it then and there was, and is, false.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that the said Press Publishing Company then and there, to wit, at the time and place of so composing, writing, printing, and publishing the said false, scandalous, malicious, and defamatory libel as in this count aforesaid, in and by the same did mean and intend to charge, and the same taken as a whole then and there did, and does, mean and charge, and convey to a reader thereof the idea, particularly that the said Theodore Roosevelt, in violation of his lawful duty as President of the United States, and the said William Howard Taft, in violation of his lawful duty as Secretary of War and as cabinet adviser of the President, had dishonestly, fraudulently, corruptly, and criminally combined with the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, and with others, and the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell had in like manner combined with them, the said Theodore Roosevelt and William Howard Taft, in a so-called syndicate, to acquire, and such syndicate had acquired, the said property and rights of the said New Panama Canal Company at a very low price,
to wit, for the sum of $3,500,000.00, in advance of the acquisi-
33 tion and purchase of the same by the United States for the sum of $40,000,000.00, and had thereby secured for the said syndicate an enormous and exorbitant profit, to wit, a profit of $36,500,000.00; that the said Theodore Roosevelt and William Howard Taft, as such President and Secretary respectively, had dishonestly, fraudulently, corruptly, and criminally urged upon the Congress of the United States, and procured, the necessary legislation for acquiring and purchasing the said property and rights for the sum of $40,000,000.00, and, generally, that the said Theodore Roosevelt, Douglas Robinson, William Howard Tatf, Charles P. Taft, and William Nelson Cromwell, as principals and as accessories, had engaged in, and were suspected of having engaged in, unlawful, dishonest, fraudulent, and criminal practices in the nature of conspiracy to defraud the United States and others, bribery of and by United States officers and Members of Congress and of officers of foreign governments, interference with the affairs of foreign governments, and breaches of official and professional trust, in connection with the said acquisition and purchase of the said property and proprietary rights, whereby

they secured for themselves without right enormous sums of money from the Treasury of the United States.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said Press Publishing Company, in manner and form and at the time in this count aforesaid, and in a place which had been ceded to and was, and is, under the jurisdiction of the United States, unlawfully did commit the offense of falsely, wickedly, knowingly, maliciously, and scandalously composing, writing, printing, and publishing a criminal libel upon the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, to their great damage, scandal, infamy, and disgrace, to the evil example of all others in like case offending, and against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

ELEVENTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period of time from the fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, Theodore Roosevelt has been President of the United States, while Douglas Robinson was and is a brother-in-law of the said Theodore Roosevelt; that William Howard Taft, from the first day of February, in the year nineteen hundred and four, until the thirtieth day of June, in the year nineteen hundred and eight, was Secretary of War of the United States, and at the time of the committing, by the defendant hereinafter named, of the offense in this count of this indictment mentioned, was the Republican candidate and nominee for the office of President of the United States, and Charles P. Taft was a brother of the said William Howard Taft; that William Nelson Cromwell, during all of the said period of time from the said fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, has been and is an attorney and counsellor at law, residing and practising his profession in city of New York, in the State of New York, and has for one of his clients the Compagnie Nouvelle du Canal de Panama, in this count of this indictment hereafter mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in the year eighteen hundred and eighty-eight, the Compagnie Universelle du Canal Interoceanique de Panama, a corporation (sometimes refered to as the De Lesseps Canal Company and sometimes as the Old Panama Canal Company), organized under the laws of France, which had acquired certain concessions from the Republic of Colombia to construct a maritime canal across the Isthmus of Panama, had commenced to construct such canal, but had failed to complete the same, became insolvent, and its affairs were placed in the hands of a receiver (in France called a liquidator), pursuant to proceedings to that end in the French courts; that there-

after, in the year eighteen hundred and ninety-four, the property rights, franchises, and concessions of the said corporation were disposed of by the said liquidator to the Compagnie Nouvelle du Canal de Panama, a joint-stock company organized under the laws of France and sometimes called the New Panama Canal Company, which company carried forward the work of constructing the said canal, but not to completion; that after that, and in the year eighteen hundred and ninety-nine, the President of the United States was authorized by law to make an investigation of the Isthmus of Panama with a view to the construction of a canal across the same by the United States, to investigate the available routes for such canal, particularly the Nicaraguan and the Panama routes, with a view to determining what was the most practicable route, to ascertain what rights and franchises were already held by others in that connection, and what work had been done; and, generally, to investigate fully so as to determine the most feasible and practicable route for a canal across the said isthmus and the cost of constructing the same by the United States, and report the result of his investigations to Congress with his recommendations; that thereafter, in the year nineteen hundred and two, the President of the United States was, by the act of Congress approved June twenty-eight, in that year, "authorized to acquire, for and on behalf of the United States, at a cost not exceeding forty millions of dollars, the rights, privileges, franchises, concessions, grants of land, right of way, unfinished work, plants and other property, real, personal, and mixed, of every name and nature, owned by the New Panama Canal Company, of France, on the Isthmus of Panama, and all its maps, plans, drawings, records on the Isthmus of Panama and in Paris, including all the capital stock, not less, however, than sixty-eight thousand eight hundred and sixty-three shares of the Panama Railroad Company, owned by or held for the use of the said canal company, provided, a satisfactory title to all of the said property" could be obtained; and that the said property and proprietary rights were, in fact, thereafter, to wit, in the year nineteen hundred and four, acquired and pur-
31 chased by the United States for the sum of $40,000,000.00.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the said period of time in this count of this indictment first above mentioned there has existed a certain tract of land in the Borough of Manhattan, in the city of New York, and in the said State and southern district of New York, purchased and accepted by the Congress of the United States by the consent of the legislature of the said State of New York, whereon has stood a needful building used by the United States as a post-office, over which said tract exclusive jurisdiction was, long before the said period and subsequent to such purchase, ceded by the State of New York to, and ever since such cession has been exercised by, the United States, together with exclusive legislation in all cases whatsoever; which said tract of land in this count of this indictment mentioned is one bounded by Broadway, Park place, and Mail street, in the said borough.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the said period of time, to wit, on the seventh day of October, in the year nineteen hundred and eight, at and within the said post-office building, and in the said State and southern district of New York, the said Press Publishing Comapny, a corporation theretofore organized and then existing and doing business under and by virtue of the laws of the said State of New York, as having composed, written, and printed in the said newspaper the false, scandalous, malicious, and defamatory libels in the eighth, ninth, and tenth counts of this indictment referred to, and so having published the same as in the said eighth, ninth, and tenth counts charged, contriving, and unlawfully, wickedly, and maliciously intending to injure, vilify, and prejudice the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, and each of them, to deprive each of them of his good name, fame, credit, and reputation, expose him to hatred, contempt, ridicule, and obloquy, bring him into great scandal, infamy, and disgrace, to excite, induce, tempt, and cause them, respectively, to commit breaches of the peace, and otherwise to stir up disorder among the people, unlawfully did falsely, wickedly, knowingly, maliciously, and scandalously compose, write, print, and publish in a certain newspaper, to wit, a newspaper called The World, then owned and published by it the said Press Publishing Company and by the said Press Publishing Company circulated throughout the United States and the said southern district of New York, and particularly in the said post-office building—that is to say, in the issue of that newspaper for the day in this count last above mentioned, a certain other false, scandalous, malicious, and defamatory libel in the form of a newspaper article then and there containing divers false, scandalous, malicious, and defamatory matters in print of and concerning the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, and of and concerning the matter of the purchase, in the year nineteen hundred and four, by the Government of the United States, for the sum of $40,000,000.00 from the said Compagnie Nouvelle du Canal de Panama, of its property and proprietary rights at the Isthmus of Panama, preliminary to the construction by the Government of the United States of the Panama Canal across that isthmus; which said newspaper article and libel, and false, scandalous, malicious, and defamatory matters in print in this count referred to, then and there were, and are, of the same tenor as the newspaper articles referred to in the tenth and set forth in full in the third count of this indictment.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that the said publication, at the time and place in this count of this indictment mentioned, of the false, scandalous, malicious, and defamatory libel in this count referred to then and there was accomplished by the said Press Publishing Company knowingly delivering by mail of the United States, and causing to be delivered, to one Walter S. Mayer, post-office inspector in charge, at his office in room 106 of the said post-office building, a copy of the said newspaper,

so then and there containing the last-mentioned false, scandalous, malicious, and defamatory newspaper article and libel, which said newspaper article and libel was thereupon there received by the said Walter S. Mayer and there, to wit, in the said post-office building, by him read and understood; it the said Press Publishing Company then and there, well knowing all the premises in this indictment aforesaid, and well knowing the said false, scandalous, malicious, and defamatory article mentioned in this count to be printed in the said copy of the said newspaper so delivered and caused to be delivered to the said Walter S. Mayer, and well knowing the same to be, as it then and there was, and is, false.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that the said Press Publishing Company then and there, to wit, at the time and place of so composing, writing, printing, and publishing the said false, scandalous, malicious, and defamatory libel as in this count aforesaid, in and by the same did mean and intend to charge, and the same taken as a whole then and there did, and does, mean and charge and convey to a reader thereof the idea particularly that the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell had combined together in a so-called syndicate to acquire the said property and rights of the said New Panama Canal Company at a very low price, to wit, for the sum of $3,500,000.00 in advance of the said acquisition and purchase of the same by the United States for the sum of $40,000,000.00, that the said syndicate, having, in fact, as it was so charged, acquired the shares of stock of the French Panama Canal Company (meaning the said New Panama Canal Company) and the other outstanding securities thereof with a view to selling the same to the United States, had, by dishonest, fraudulent, corrupt, and criminal methods, including with others the deceiving of the said President and Secretary of War as to the fact of such syndicate's having a pecuniary interest therein, and imposing upon those officers by means of their said relationship with them and the friendship existing between them, urged upon and secured from the Government of the United States legislation providing for the
32 said acquisition of the said shares of stock and other securities and of the said property and proprietary rights of the said New Panama Canal Company, and urged upon and secured the purchase of the same by the United States; that the said syndicate had thereby dishonestly, fraudulently, corruptly, and criminally reaped an enormous profit, to wit, a profit of $36,500,000.00, at the expense of the Treasury of the United States; and, generally, that the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, as principals, and as accessories, had engaged in and were suspected of having engaged in, unlawful, dishonest, fraudulent, and criminal practices in the nature of conspiracy to defraud the United States and others, bribery of United States officers and members of Congress, and breaches of professional trust, in connection with the said acquisition and purchase of the said property and proprietary rights.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said Press Publishing Company in manner and form and at the time in this count aforesaid and in a place which had been ceded to and was and is under the jurisdiction of the United States unlawfully did commit the offense of falsely, wickedly, knowingly, maliciously, and scandalously composing, writing, printing, and publishing a criminal libel upon the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell to their great damage, scandal, infamy, and disgrace, to the evil example of all others in like case offending and against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

TWELFTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the period of time from the fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment Theodore Roosevelt has been President of the United States, while Douglas Robinson was and is a brother-in-law of the said Theodore Roosevelt; that William Howard Taft from the first day of February, in the year nineteen hundred and four, until the thirtieth day of June, in the year nineteen hundred and eight, was Secretary of War of the United States, and at the time of the committing, by the defendant hereinafter named, of the offense in this count of this indictment mentioned was the Republican candidate and nominee for the office of President of the United States, and Charles P. Taft was a brother of the said William Howard Taft; that William Nelson Cromwell during all the said period of time from the said fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment has been and is an attorney and counsellor at law residing and practicing his profession in the city of New York, in the State of New York, and has had for one of his clients the Compagnie Nouvelle du Canal de Panama, in this count of this indictment hereafter mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that in the year eighteen hundred and eighty-eight the Compagnie Universelle du Canal Interoceanique de Panama, a corporation (sometimes referred to as the De Lesseps Canal Company and sometimes as the Old Panama Canal Company) organized under the laws of France, which had acquired certain concessions from the Republic of Colombia to construct a maritime canal across the Isthmus of Panama, had commenced to construct such canal, but had failed to complete the same, became insolvent and its affairs were placed in the hands of a receiver (in France called a liquidator) pursuant to proceedings to that end in the French courts; that thereafter, in the year eighteen hundred and ninety-four, the property, rights, franchises, and concessions of the said corporation were disposed of by the said liquidator to the Compagnie du Canal de Panama, a joint-

stock company organized under the laws of France and sometimes called the New Panama Canal Company, which company carried forward the work of constructing the said canal, but not to completion; that after that, and in the year eighteen hundred and ninety-nine, the President of the United States was authorized by law to make an investigation of the Isthmus of Panama with a view to the construction of a canal across the same by the United States, to investigate the available routes for such canal, particularly the Nicaraguan and the Panama routes, with a view to determining what was the most practical route; to ascertain what rights and franchises were already held by others in that connection, and what work had been done, and, generally, to investigate fully so as to determine the most feasible and practicable route for a canal across the said Isthmus and the cost of constructing the same by the United States, and report the result of his investigations to Congress with his recommendations; that thereafter, in the year nineteen hundred and two, the President of the United States was, by the act of Congress approved June twenty-eight, in that year, "authorized to acquire for and on behalf of the United States at a cost not exceeding forty millions of dollars the rights, privileges, franchises, concessions, grants of land, right of way, unfinished work, plants, and other property, real, personal, and mixed, of every name and nature owned by the New Panama Canal Company, of France, on the Isthmus of Panama, and all its maps, plans, drawings, records on the Isthmus of Panama and in Paris, including all the capital stock, not less, however, than sixty-eight thousand eight hundred and sixty-three shares of the Panama Railroad Company, owned by or held for the use of the said canal company, provided a satisfactory title to all of the said property" could be obtained; and that the said property and proprietary rights were, in fact, thereafter, to wit, in the year nineteen hundred and four, acquired and purchased by the United States for the sum of $40,000,000.00.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the said period of time in this count of this indictment first above mentioned there has existed a certain tract of land in the Borough of Manhattan, in the city of New York, and in the said State and Southern District of New York, purchased and accepted by the Congress of the United States by the consent of the legislature of the said State of New York, whereon has stood a
36 needful building used by the United States as a post-office, over which said tract exclusive jurisdiction was, long before the said period and subsequent to such purchase, ceded by the State of New York to, and ever since such cession has been exercised by, the United States, together with exclusive legislation in all cases whatsoever, which said tract of land in this count of this indictment mentioned is one bounded by Broadway, Park place, and Mail street, in the said borough.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the said period of time, to wit, on the

fourteenth day of October, in the year nineteen hundred and eight, at and within the said post-office building, and in the said State and Southern District of New York, the said Press Publishing Company, a corporation theretofore organized and then existing and doing business under and by virtue of the laws of the said State of New York, so having composed, written, and printed in the said newspaper, the false, scandalous, malicious, and defamatory libels in the eighth, ninth, and tenth counts of this indictment referred to, and so having published the same as in the said eighth, ninth, and tenth counts charged, contriving, and unlawfully, wickedly, and maliciously intending to injure, vilify, and prejudice the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, and each of them, to deprive each of them of his good name, fame, credit, and reputation, expose him to hatred, contempt, ridicule, and obloquy, bring him into great scandal, infamy, and disgrace, to excite, induce, tempt, and cause them respectively to commit breaches of the peace, and otherwise to stir up disorder among the people, unlawfully did falsely, wickedly, knowingly, maliciously, and scandalously compose, write, print, and publish in a certain newspaper, to wit, a newspaper called The World, then owned and published by it, the said Press Publishing Company, and by it, the said Press Publishing Company, circulated throughout the United States and the said Southern District of New York, and particularly in the said post-office building, that is to say, in the issue of that newspaper for the day in this count last above mentioned, a certain other false, scandalous, malicious, and defamatory libel in the form of a newspaper article, then and there containing divers false, scandalous, malicious, and defamatory matters in print of and concerning the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, and of and concerning the matter of the purchase, in the year nineteen hundred and four, by the Government of the United States, for the sum of $40,000,000.00, from the said Compagnie Nouvelle du Canal de Panama, of its property and proprietary rights at the Isthmus of Panama, preliminary to the construction by the Government of the United States of the Panama Canal across that Isthmus; which said newspaper article and libel, and false, scandalous, malicious, and defamatory matters in print in this count referred to, then and there were, and are, of the same tenor as the newspaper article set forth in full in the fifth count of this indictment.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said publication, at the time and place in this count of this indictment mentioned, of the false, scandalous, malicious, and defamatory libel in this count referred to, then and there was accomplished by the said Press Publishing Company knowingly delivering by mail of the United States, and causing to be delivered to one Walter S. Mayer, post-office inspector in charge, at his office in room 106 of the said post-office building, a copy of the said newspaper, so then and there containing the last-mentioned

false, scandalous, malicious, and defamatory newspaper article and libel, which said newspaper article and libel was thereupon there received by the said Walter S. Mayer, and there, to wit, in the said post-office building, by him read and understood; it, the said Press Publishing Company, then and there, well knowing all the premises in this indictment aforesaid, and well knowing the said false, scandalous, malicious, and defamatory article mentioned in this count to be printed in the said copy of the said newspaper so delivered and caused to be delivered to the said Walter S. Mayer, and well knowing the same to be, as it then and there was, and is, false.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Press Publishing Company then and there, to wit, at the time and place of so composing, writing, printing, and publishing the said false, scandalous, malicious, and defamatory libel as in this count aforesaid, in and by the same did mean and intend to charge, and the same taken as a whole then and there did, and does, mean and charge, and convey to a reader thereof the idea, particularly that the said Theodore Roosevelt, in violation of his lawful duty as President of the United States, and the said William Howard Taft, in violation of his lawful duty as Secretary of War and as Cabinet adviser of the President, had, before the event, and before it was known to the public, dishonestly, fraudulently, corruptly, and criminally disclosed to other and unofficial persons, to wit, the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, in order that those persons might make use of the same for their personal ends and profit, and that those persons had in fact dishonestly, fraudulently, corruptly, and criminally accepted and made use of the same for their own personal ends and profit, the information that the Government of the United States was about to acquire and purchase the said property and proprietary rights of the said New Panama Canal Company for the sum of $40,000,000.00; that the said Theodore Roosevelt and William Howard Taft, in violation of their said duties, had dishonestly, fraudulently, corruptly, and criminally combined with the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, and with others, and the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell had in like manner combined with them, the said Theodore Roosevelt and William Howard Taft, in a so-called syndicate, to acquire the said property and rights of the said New Panama Canal Company at a very low price, to wit, for the sum of $3,500,000.00, in advance of such acquisition and purchase of the same by the United States;

that the said syndicate did so acquire the same at such price;

37 that the said Theodore Roosevelt and William Howard Taft, in violation of their lawful duties as such President and Secretary of War, and for the purpose of concealing his dishonest, fraudulent, corrupt, and criminal transactions charged in the newspaper article and libel in this count mentioned, had obliterated, destroyed, and concealed all official books, documets, and other sources of official and other information bearing upon or recording the said transaction.

and had concealed, and were endeavoring to conceal, all traces and evidence of such transactions from the public, and that they had concealed from the convention of the Republican party, which assembled at the city of Chicago in the month of June, in the same year nineteen hundred and eight, all knowledge of the said transactions, dishonesty, fraud, corruption, and criminality, and thereby had dishonestly and corruptly promoted the candidacy and nomination of the said William Howard Taft for the office of President of the United States; and, generally, that the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, as principals and as accessories, had engaged in, and were suspected of having engaged in, unlawful, dishonest, fraudulent, and criminal practices in the nature of conspiracy to defraud the United States and others, bribery of and by United States officers and Members of Congress and of officers of foreign governments, interference with the affairs of foreign government, and breaches of official and professional trust, in connection with the said acquisition and purchase of the said property and proprietary rights, whereby they secured for themselves without right enormous sums of money from the Treasury of the United States.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Press Publishing Company, in manner and form and at the time in this count aforesaid, and in a place which had been ceded to and was, and is, under the jurisdiction of the United States, unlawfully did commit the offense of falsely, wickedly, knowingly, maliciously, and scandalously composing, writing, printing, and publishing a criminal libel upon the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, to their great damage, scandal, infamy, and disgrace, to the evil example of all others in like case offending, and against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

THIRTEENTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period of time from the fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, Theodore Roosevelt has been President of the United States, while Douglas Robinson was and is a brother-in-law of the said Theodore Roosevelt; that William Howard Taft from the first day of February, in the year nineteen hundred and four, until the thirtieth day of June, in the year nineteen hundred and eight, was Secretary of War of the United States, and at the time of the committing, by the defendant hereinafter named, of the offense in this count of this indictment mentioned, was the Republican candidate and nominee for the office of President of the United States, and Charles P. Taft was a brother of the said William Howard Taft; that William Nelson Cromwell,

during all of the said period of time from the said fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, has been and is an attorney and counsellor at law residing and practising his profession in the city of New York, in the State of New York, and has had for one of his clients the Compagnie Nouvelle du Canal de Panama in this count of this indictment hereafter mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in the year eighteen hundred and eighty-eight, the Compagnie Universelle du Canal Interoceanique de Panama, a corporation (sometimes referred to as the De Lesseps Canal Company and sometimes as the Old Panama Canal Company) organized under the laws of France, which had acquired certain concessions from the Republic of Colombia to construct a maritime canal across the Isthmus of Panama, had commenced to construct such canal, but had failed to complete the same, became insolvent, and its affairs were placed in the hands of a receiver (in France called a liquidator) pursuant to proceedings to that end in the French courts; that thereafter, in the year eighteen hundred and ninety-four, the property, rights, franchises, and concessions of the said corporation were disposed of by the said liquidator to the Compagnie Nouvelle du Canal de Panama, a joint-stock company organized under the laws of France and sometimes called the New Panama Canal Company, which company carried forward the work of constructing the said canal, but not to completion; that after that, and in the year eighteen hundred and ninety-nine, the President of the United States was authorized by law to make an investigation of the Isthmus of Panama with a view to the construction of a canal across the same by the United States, to investigate the available routes for such canal, particularly the Nicaraguan and the Panama routes, with a view to determining what was the most practicable route, to ascertain what rights and franchises were already held by others in that connection, and what work had been done, and, generally, to investigate fully so as to determine the most feasible and practicable route for a canal across the said Isthmus and the cost of constructing the same by the United States, and report the result of his investigations to Congress with his recommendations; that thereafter, in the year nineteen hundred and two, the President of the United States was, by the act of Congress approved June twenty-eight, in that year, "authorized to acquire, for and on behalf of the United States, at a cost not exceeding forty millions of dollars, the rights, privileges, franchises, concessions, grants of land, right of way, unfinished work, plants, and other property, real, personal, and mixed, of every name and nature, owned by the New Panama Canal Company, of France, on the Isthmus of Panama, and all its maps, plans, drawings, records on the Isthmus of Panama and in Paris, including all the capital stock,
38 not less, however, than sixty-eight thousand eight hundred and sixty-three shares of the Panama Railroad Company, owned by or held for the use of the said canal company, provided a

satisfactory title to all of the said property" could be obtained; and that the said property and proprietary rights were, in fact, thereafter, to wit, in the year nineten hundred and four, acquired and purchased by the United States for the sum of $40,000,000.00.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the said period of time in this count of this indictment first above mentioned there has existed a certain tract of land in the borough of Manhattan, in the city of New York, and in the said State and Southern District of New York, purchased and accepted by the Congress of the United States by the consent of the legislature of the said State of New York, whereon has stood a needful building used by the United States as a post-office, over which said tract exclusive jurisdiction was, long before the said period and subsequent to such purchase, ceded by the State of New York to, and ever since such cession has been exercised by, the United States, together with exclusive legislation in all cases whatsoever; which said tract of land in this count of this indictment mentioned is one bounded by Broadway, Park place, and Mail street, in the said borough.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the said period of time, to wit, on the sixteenth day of October, in the year nineteen hundred and eight, at and within the said post-office building, and in the said State and Southern District of New York, the said Press Publishing Company, a corporation theretofore organized and then existing and doing business under and by virtue of the laws of the said State of New York, so having composed, written, and printed in the said newspaper, the false, scandalous, malicious, and defamatory libels in the eighth, ninth, tenth, and twelfth counts of this indictment referred to, and so having published the same as in the said eighth, ninth, tenth, and twelfth counts charged, again contriving and unlawfully, wickedly and maliciously intending to injure, vilify, and prejudice the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, and each of them, to deprive each of his good name, fame, credit, and reputation, expose him to hatred, contempt, ridicule, and obloquy, bring him into great scandal, infamy, and disgrace, to excite, induce, tempt, and cause them, respectively, to commit breaches of the peace, and otherwise to stir up disorder among the people, unlawfully did falsely, wickedly, knowingly, maliciously, and scandalously compose, write, print, and publish, in a certain newspaper, to wit, a newspaper called The World, then owned and published by it the said Press Publishing Company and by it the said Press Publishing Company circulated throughout the United States and the said Southern District of New York, and particularly in the said post-office building, that is to say, in the issue of that newspaper for the day in this count last above mentioned, a certain other false, scandalous, malicious, and defamatory libel in the form of a newspaper article then and there containing divers false, scandalous, malicious, and defamatory matters in print of and

concerning the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, and of and concerning the matter of the purchase, in the year nineteen hundred and four, by the Government of the United States, for the sum of $40,000,000.00, from the said Compagnie Nouvelle du Canal de Panama, of its property and proprietary rights at the Isthmus of Panama, preliminary to the construction by the Government of the United States of the Panama Canal across that isthmus; which said newspaper article and libel, and false, scandalous, malicious, and defamatory matters in print in this count referred to, then and there were, and are, of the same tenor as the newspaper article set forth in full in the sixth count of this indictment.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said publication, at the time and place in this count of this indictment mentioned, of the false, scandalous, malicious, and defamatory libel in this count referred to then and there was accomplished by the said Press Publishing Company knowingly delivering by mail of the United States, and causing to be delivered, to one Walter S. Mayer, post-office inspector in charge, at his office in room 106 of the said post-office building, a copy of the said newspaper, so then and there containing the last mentioned false, scandalous, malicious, and defamatory newspaper article and libel, which said newspaper article and libel was thereupon there received by the said Walter S. Mayer and there, to wit, in the said post-office building, by him read and understood; it the said Press Publishing Company then and there well knowing all the premises in this indictment aforesaid, and well knowing the said false, scandalous, malicious, and defamatory article mentioned in this count to be printed in the said copy of the said newspaper so delivered and caused to be delivered to the said Walter S. Mayer, and well knowing the same to be, as it then and there was, and is, false.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Press Publishing Company, then and there, to wit, at the time and place of so composing, writing, printing, and publishing the said false, scandalous, malicious, and defamatory libel as in this count aforesaid, in and by the same did mean and intend to charge, and the same taken as a whole then and there did, and does, mean and charge, and convey to a reader thereof the idea, particularly that the said Theodore Roosevelt, in violation of his lawful duty as President of the United States, and the said William Howard Taft, in violation of his lawful duty as Secretary of War and as cabinet adviser of the President, had, before the event, and before it was known to the public, dishonestly, fraudulently, corruptly, and criminally disclosed to other and unofficial persons, to wit, the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, in order that those persons might make use of the same for their personal ends and profit, and that those persons had, in fact, dishonestly, fraudulently, corruptly, and criminally accepted and made use of the same for their own personal ends and profit, the

information that the Government of the United States was
39 about to acquire and purchase the said property and proprietary rights of the said New Panama Canal Company for the sum of $40,000,000.00; that the said Thodore Roosevelt and William Howard Taft, in violation of their said duties, had dishonestly, fraudulently, corruptly, and criminally combined with the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, and with others, and the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell had in like manner combined with them the said Theodore Roosevelt and William Howard Taft, in a so-called syndicate to acquire, and such syndicate had acquired, the said property and rights of the said New Panama Canal Company at a very low price, in advance of the acquisition and purchase of the same by the United States; that the said Theodore Roosevelt and William Howard Taft, in violation of their lawful duties as such President and Secretary of War, and for the purpose of concealing the dishonest, fraudulent, corrupt, and criminal transactions so in this count charged, had obliterated, destroyed, and concealed all official books, documents, and other sources of official and other information bearing upon or recording the said transactions, and had concealed, and were endeavoring to conceal, all traces and evidence of such transactions from the public; and, generally, that the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, as principals and as accessories, had engaged in, and were suspected of having engaged in, unlawful, dishonest, fraudulent, and criminal practices in the nature of conspiracy to defraud the United States and others, bribery of and by United States officers and Members of Congress and of officers of foreign governments, interference with the affairs of foreign governments and breaches of official and professional trust, in connection with the said acquisition and purchase of the said property and proprietary rights, whereby they secured for themselves without right enormous sums of money from the Treasury of the United States.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Press Publishing Company, in manner and form and at the time in this count aforesaid, and in a place which had been ceded to and was, and is, under the jurisdiction of the United States, unlawfully did commit the offense of falsely, wickedly, knowingly, maliciously, and scandalously composing, writing, printing, and publishing a criminal libel upon the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, to their great damage, scandal, infamy, and disgrace, to the evil example of all others in like case offending, and against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

FOURTEENTH COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period of time from the fourteenth

day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, Theodore Roosevelt has been President of the United States, while Douglas Robinson was and is a brother-in-law of the said Theodore Roosevelt; that William Howard Taft from the first day of February, in the year nineteen hundred and four, until the thirtieth day of June, in the year nineteen hundred and eight, was Secretary of War of the United States, and at the time of the committing, by the defendant hereinafter named, of the offense in this count of this indictment mentioned, was the Republican candidate and nominee for the office of President of the United States, and Charles P. Taft was a brother of the said William Howard Taft; that William Nelson Cromwell, during all of the said period of time from the said fourteenth day of September, in the year nineteen hundred and one, to the day of the finding and presentation of this indictment, has been and is an attorney and counsellor at law residing and practising his profession in the city of New York, in the State of New York, and has had for one of his clients the Campagnie Nouvelle du Canal de Panama in this count of this indictment hereafter mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in the year eighteen hundred and eighty-eight, the Campagnie Universelle du Canal Interoceanique de Panama, a corporation (sometimes referred to as the De Lesseps Canal Company and sometimes as the Old Panama Canal Company), organized under the laws of France, which had acquired certain concessions from the Republic of Colombia to construct a maritime canal across the Isthmus of Panama, had commenced to construct such canal, but had failed to complete the same, became insolvent, and its affairs were placed in the hands of a receiver (in France called a liquidator), pursuant to proceedings to that end in the French courts; that thereafter, in the year eighteen hundred and ninety-four, the property, rights, franchises, and concessions of the said corporation were disposed of by the said liquidator to the Campagnie Nouvelle du Canal de Panama, a joint-stock company organized under the laws of France and sometimes called the New Panama Canal Company, which company carried forward the work of constructing the said canal, but not to completion; that after that, and in the year eighteen hundred and ninety-nine, the President of the United States was authorized by law to make an investigation of the Isthmus of Panama with a view to the construction of a canal across the same by the United States, to investigate the available routes for such canal, particularly the Nicaraguan and the Panama routes, with a view to determining what was the most practicable route, to ascertain what rights and franchises were already held by others in that connection, and what work had been done, and, generally, to investigate fully so as to determine the most feasible and practicable route for a canal across the said Isthmus and the cost of constructing the same by the United States, and report the result of his investigations to Congress with his recommendations; that thereafter, in the year nineteen hundred and two, the

President of the United States was, by the act of Congress approved June twenty-eight, in that year, "authorized to acquire, for and on behalf of the United States, at a cost not exceeding forty millions of dollars, the rights, privileges, franchises, concessions, grants of land, right of way, unfinished work, plants, and other property, real, personal, and mixed, of every name and nature, owned by the New Panama Canal Company, of France, on the Isthmus of Panama, and all its maps, plans, drawings, records on the Isthmus of Panama and in Paris, including all the capital stock, not less, however, than sixty-eight thousand eight hundred and sixty-three shares of the Panama Railroad Company, owned by or held for the use of the said canal company, provided a satisfactory title of all of the said property" could be obtained; and that the said property and proprietary rights were, in fact, thereafter, to wit, in the year nineteen hundred and four, acquired and purchased by the United States for the sum of $40,000,000.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the said period of time in this count of this indictment first above mentioned there has existed a certain tract of land in the Borough of Manhattan, in the city of New York, and in the said State and Southern District of New York, purchased and accepted by the Congress of the United States, by the consent of the legislature of the said State of New York, whereon has stood a needful building used by the United States as a post-office, over which said tract exclusive jurisdiction was, long before the said period and subsequent to such purchase, ceded by the State of New York to, and ever since such cession has been exercised by, the United States, together with exclusive legislation in all cases whatsoever; which said tract of land in this count of this indictment mentioned is one bounded by Broadway, Park place, and Mail street, in the said borough.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the said period of time, to wit, on the nineteenth day of October, in the year nineteen hundred and eight, at and within the said post-office building, and in the said State and Southern District of New York, the said Press Publishing Company, a corporation theretofore organized and then existing and doing business under and by virtue of the laws of the said State of New York, so having composed, written, and printed in the said newspaper the false, scandalous, malicious, and defamatory libels in the eighth, ninth, tenth, twelfth, and thirteenth counts of this indictment referred to, and so having published the same as in the said eighth, ninth, tenth, twelfth, and thirteenth counts charged, again contriving and unlawfully, wickedly, and maliciously intending to injure, villify, and prejudice the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, and each of them, to deprive each of them of his good name, fame, credit, and reputation, expose him to hatred, contempt, ridicule, and obloquy, bring him into great scandal, infamy, and disgrace,

to excite, induce, tempt, and cause them, respectively, to commit breaches of the peace, and otherwise to stir up disorder among the people, unlawfully did falsely, wickedly, knowingly, maliciously, and scandalously compose, write, print, and publish in a certain newspaper, to wit, a newspaper caller The World, then owned and published by it, the said Press Publishing Company, and by it, the said Press Publishing Company, circulated throughout the United States and the said Southern District of New York, and particularly in the said post-office building; that is to say, in the issue of that newspaper for the day in this count last above mentioned, a certain other false, scandalous, malicious, and defamatory libel in the form of a newspaper article then and there containing divers false, scandalous, malicious, and defamatory matters in print of and concerning the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, and of and concerning the matter of the purchase, in the year nineteen hundred and four, by the Government of the United States, for the sum of $40,000,000.00, from the said Compagnie Nouvelle du Canal de Panama, of its property and proprietary rights at the Isthmus of Panama, preliminary to the construction by the Government of the United States of the Panama Canal across that isthmus; which said newspaper article and libel, and false, scandalous, malicious, and defamatory matters in print in this count referred to, then and there were, and are, of the same tenor as the newspaper article set forth in full in the seventh count of this indictment.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that the said publication, at the time and place in this count of this indictment mentioned, of the false, scandalous, malicious, and defamatory libel in this count referred to then and there was accomplished by the said Press Publishing Company knowingly delivering by mail of the United States, and causing to be delivered, to one Walter S. Mayer, post-office inspector in charge, at his office in room 106 of the said post-office building, a copy of the said newspaper, so then and there containing the last-mentioned false, scandalous, malicious, and defamatory newspaper article and libel, which said newspaper article and libel was thereupon there received by the said Walter S. Mayer, and there, to wit, in the said post-office building, by him read and understood; it, the said Press Publishing Company, then and there well knowing all the premises in this indictment aforesaid, and well knowing the said false, scandalous, malicious, and defamatory article mentioned in this count to be printed in the said copy of the said newspaper so delivered and caused to be delivered to the said Walter S. Mayer, and well knowing the same to be, as it then and there was, and is, false.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that the said Press Publishing Company then and there, to wit, at the time and place of so composing, writing, printing, and publishing the said false, scandalous, malicious, and defamatory

libel in this count aforesaid, in and by the same did mean and intend to charge, and the same taken as a whole then and there did, and does, mean and charge, and convey to a reader thereof the idea, particularly that the said Theodore Roosevelt, in violation of his lawful duty as President of the United States, and the said William Howard Taft, in violation of his lawful duty as Secretary of War and as Cabinet adviser of the President, had, before the event,
41 and before it was known to the public, dishonestly, fraudulently, corruptly, and criminally disclosed to other and unofficial persons, to wit, the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, in order that those persons might make use of the same for their own personal ends and profit, and that those persons had, in fact, dishonestly, fraudulently, corruptly, and criminally accepted and made use of the same for their own personal ends and profit, the information that the Government of the United States was about to acquire and purchase the said property and proprietary rights of the said New Panama Canal Company; that the said Theodore Roosevelt and the said William Howard Taft, in violation of their said duties, had dishonestly, fraudulently, corruptly, and criminally combined with the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, and with others, and the said Douglas Robinson, Charles P. Taft, and William Nelson Cromwell had in like manner combined with them, the said Theodore Roosevelt and William Howard Taft, in a so-called syndicate, to acquire the said property and rights of the said New Panama Canal Company at a very low price, to wit, for the sum of $3,000,000.00, in advance of the acquisition and purchase of the same by the United States for the sum of $40,000,000.00; that the said syndicate did so acquire the same at such price, and had thereby secured an enormous profit; that the said Theodore Roosevelt and William Howard Taft, as such President and Secretary, respectively, had dishonestly, fraudulently, corruptly, and criminally urged upon the Congress of the United States, and procured, the necessary legislation for acquiring and purchasing the said property and rights for the sum of $40,000,000.00; that the said Theodore Roosevelt and William Howard Taft, in violation of their said lawful duties, and for
42 the purpose of concealing the dishonest, fraudulent, corrupt, and criminal transactions so in this count charged, had obliterated, destroyed, and concealed all official books, documents, and other sources of official and other information bearing upon or recording the said transactions, and had concealed, and were endeavoring to conceal, all traces and evidence of such transactions from the public; and, generally, that the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, as principals and as accessories, had engaged in, and were suspected of having engaged in, unlawful, dishonest, fraudulent, and criminal practices in the nature of conspiracy to defraud the United States and others, bribery of and by the United States officers and Members of Congress and of officers of foreign governments, inter-

ference with the affairs of foreign governments, and breaches of official and professional trust, in connection with the said acquisitions and purchase of the said property and proprietary rights, whereby they secured for themselves without right enormous sums of money from the Treasury of the United States.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said Press Publishing Company, in manner and form and at the time in this count aforesaid, and in a place which had been ceded to and was, and is, under the jurisdiction of the United States, unlawfully did commit the offense of falsely, wickedly, knowingly, maliciously, and scandalously composing, writing, printing, and publishing a criminal libel upon the said Theodore Roosevelt, Douglas Robinson, William Howard Taft, Charles P. Taft, and William Nelson Cromwell, to their great damage, scandal, infamy, and disgrace, to the evil example of all others in like case offending, and against the peace and dignity of the United States and contrary to the
43 form of the statute of the same in such case made and provided.

HENRY L. STIMSON,
United States Attorney.

Schedule.

Dates of articles.	Counts.	
	Post exchange.	Walter S. Mayer.
Oct. 3, 1908	1	8
" 4, "	2	9
" 7, "	3	10
" 7, "	4	11
" 14, "	5	12
" 16, "	6	14
" 19, "	7	13

(Endorsed:) U. S. Circuit Court, Southern Dist. of N. Y. The United States of America vs. Press Publishing Company. Indictment. Henry L. Stimson, U. S. attorney. So. Dist. of N. Y. A true bill, Joseph W. Teets, foreman. U. S. Circuit Court, Southern District N. Y. Filed Mar. 4, 1909. John A. Shields, clerk.

1909.
March 5. Deft. appears by DeLancey Nicoll.
Pleading adjourned one week.
March 15. Deft. pleads not guilty.
1910.
Jan. 25. Trial begun.
Jan. 26. Motion to quash granted.
44 Feb. 28. Filed order extending January term, 1910, to April 1, 1910, and it is further ordered that the time to file bill of exceptions, etc., be extended to April 1.

45 *Order for judgment.*

At a stated term of the United States Circuit Court, for the trial of criminal causes, held at the United States court-house and post-office building, in the borough of Manhattan, city of New York, on the 25th day of February, 1910, present, Hon. Charles M. Hough, U. S. Judge.

THE UNITED STATES OF AMERICA,
vs.
THE PRESS PUBLISHING COMPANY, DEFENDANT.

An indictment against the Press Publishing Company, the defendant above named, having been found and filed by the grand jurors of the United States in and for the Southern District of New York in the office of the clerk of the United States Circuit Court for the Southern District of New York on the 4th day of March, 1909, and thereafter the defendant above named having been arraigned and having thereupon interposed a plea of not guilty, and the issues raised by the said plea having been thereafter brought on for trial, and a jury having thereupon been drawn, empaneled, and sworn, and the Government having presented certain evidence in support of the allegations contained in the indictment herein, and thereupon on the 26th day of January, 1910, the defendant having made a motion herein to quash the indictment herein, and after hearing argument thereon,

Now, on motion of DeLancey Nicoll, esq., counsel for the defendant, it is

Ordered and adjudged that the said motion to quash, be and the same hereby is, granted, and the indictment herein is hereby
46 quashed, set aside, and declared to be null and void because the indictment is not authorized under any construction of the act of Congress upon which it is alleged to be predicated, to wit, the act of Congress of July 7, 1898, chapter 576, section 1, 30 Stat. L., 717, or under the construction of any other statute of the United States now in force and it is further ordered that judgment be entered accordingly.

C. M. HOUGH,
United States Judge.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Feb. 25, 1910. John A. Shields, clerk.

47 *Judgment.*

United States Circuit Court for the Southern District of New York in the Second Circuit.

THE UNITED STATES OF AMERICA,
against
THE PRESS PUBLISHING COMPANY, DEFENDANT.

An indictment against the Press Publishing Company, the defendant above named, having been found and filed by the grand jurors of

the United States in and for the Southern District of New York, in the office of the clerk of the United States Circuit Court for the Southern District of New York, on the 4th day of March, 1910, and thereafter the defendant above named having been arraigned and having thereupon interposed a plea of not guilty, and the issues raised by said plea having been thereafter brought on for trial, and a jury thereupon having been drawn, empaneled, and sworn, and the Government having presented certain evidence in support of the allegations contained in the indictment. And thereupon on the 26th day of January, 1910, the defendant having made a motion herein to quash the indictment herein; and after hearing argument thereon now on motion of De Lancey Nicoll, esq., counsel for the defendant, it is

Ordered and adjudged that the said motion to quash be, and the same hereby is, granted, and the indictment is hereby quashed, set aside, and declared to be null and void, because the same is not authorized under any construction of the act of Congress upon which it is alleged to be predicated, to wit, the act of Congress of July 7, 1898, chapter 576, section 1, 30 Stat. at Large, at page 717, or
48 under the construction of any other statute of the United States now in force.

Judgment entered this 25th day of February, 1910.

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States for the Southern District of New York.

(Endorsed:) United States Circuit Court, Southern District N. Y. Filed Feb. 25, 1910. John A. Shields, clerk.

49 *Order.*

United States Circuit Court, Southern District of New York.

THE UNITED STATES OF AMERICA,
plaintiff in error,
against
THE PRESS PUBLISHING COMPANY,
defendant in error.

Upon the annexed consent it is hereby ordered that the January term of this court for the trial of criminal causes be, and the same hereby is, extended to and including the first day of April, 1910, for the purpose of allowing the United States to prepare, serve, and file its bill of exceptions herein;

And it is further ordered that the time for the United States to prepare, serve, and file its bill of exceptions herein be, and the same hereby is, extended to the first day of April, 1910;

And it is further ordered that the time for the United States to file amended or supplemental assignments of error herein be, and it

hereby is, extended to the first day of April, 1910, and it is further ordered that the United States be, and it hereby is, permitted to file amended or supplemental assignments of error herein at any time until the first day of April, 1910.

New York, February 28, 1910.

C. M. HOUGH,
United States District Judge.

The entry of the foregoing order is consented to.

HENRY A. WISE,
United States Attorney.
NICOLL, ANABLE, LINDSAY & FULLER,
Attorneys for Defendant in Error.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Feb. 28, 1910. John A. Shields, clerk.

50 Circuit Court of the United States for the Southern District of New York in the Second Circuit.

THE UNITED STATES OF AMERICA
against
PRESS PUBLISHING COMPANY, DEFENDANT.

Upon reading and filing the annexed consent it is hereby

Ordered that the time for the defendant to serve its proposed amendments to the Government's proposed bill of exceptions herein be, and the same hereby is, extended to and including the 20th day of April, 1910; and it is further

Ordered that the January, 1910, term of this court for the trial of criminal causes be, and the same hereby is, extended to and including the 20th day of April, 1910, for the purpose of settling and filing the exceptions herein at said term, and for no other purpose.

Dated March 28th, 1910.

C. M. HOUGH, *D. J.*

We hereby consent to the entry of the foregoing order.

HENRY A. WISE, *U. S. Attorney.*
NICOLL, ANABLE, LINDSAY & FULLER,
Attorneys for Defendant.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Mar. 29, 1910. John A. Shields, clerk.

51 *Order and consent.*

Circuit Court of the United States for the Southern District of New York in the Second Circuit.

THE UNITED STATES OF AMERICA
vs.
PRESS PUBLISHING CO., DEFENDANT.

On reading and filing the annexed consent it is hereby

Ordered, that the time for the defendant to serve its proposed amendments to the Government's proposed bill of exceptions herein be, and the same hereby is, extended to and including the 30th day of April, 1910; and it is further

Ordered, that the January, 1910, term of this court for the trial of criminal causes be, and the same hereby is, extended to and including the 30th day of April, 1910, for the purpose of settling and filing the exceptions herein at the said term, and for no other purpose.

Dated, April 15th, 1910.

E. H. LACOMBE,
Judge of the U. S. Circuit Court.

We hereby consent to the entry of the foregoing order.

Dated, April 15th, 1910.

HENRY A. WISE,
United States Attorney for Southern District of New York.
NICOLL, ANABLE, LINDSAY & FULLER,
Attorneys for Defendant.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Apr. 15, 1910. John A. Shields, clerk.

52 United States Circuit Court, Southern District of New York, in the Second Circuit, January term, 1910.

THE UNITED STATES OF AMERICA
vs.
PRESS PUBLISHING CO., DEFENDANT.
} Bill of exceptions.

The issues in this action came on for trial and were tried at a stated term of this court, held at the United States court-house and post-office building in the Borough of Manhattan, in the city of New York, in the Southern District of New York, on the 24th, 25th, and 26th days of February, 1910, before the Honorable Charles M. Hough, one of the United States district judges for the Southern District of New York, who had been theretofore assigned to hold said term. The Government appeared by Henry A. Wise, esq., United States attorney for said district; Stuart McNamara, esq., special assistant to

the Attorney-General, and James R. Knapp, esq., special assistant, United States attorney.

The defendants appeared herein by Messrs. Nicoll, Anable, Lindsay & Fuller, their attorneys, and De Lancey Nicoll, esq., John D. Lindsay, esq., and Thomas S. Fuller, esq., of counsel.

The Government moved the case for trial. The trial proceeded, and a jury was duly empaneled and sworn. Mr. Wise opened for the Government.

53 It was admitted by the defendant:

That the defendant now is, and throughout the month of October, 1908, was, a corporation organized and existing and doing business under and by virtue of the laws of the State of New York;

That during said month of October, 1908, one Joseph Pulitzer was its president and one J. Angus Shaw was its secretary;

That during the month of October, 1908, the defendant was and is the owner of the newspaper known as The World;

That the defendant, during the month of October, 1908, had, and now has, its printing establishment in its building, known as the Pulitzer Building, situated on Park Row, in the Borough of Manhattan, of the city of New York, which was and is a place within the jurisdiction of the State of New York, and not a place within the exclusive jurisdiction of the United States, and that the defendant at that time printed its said newspaper at said Pulitzer Building and at no other place;

That during the month of October, 1908, and for many years prior thereto and to July 7, 1898, the military reservation at West Point, in the county of Orange, in the State of New York, in the Southern District of New York, was and had been a tract of land purchased and accepted by the Congress of the United States by the consent of the legislature of the said State of New York and used by the United States as a fort and military post and reservation under the name of West Point, over which said tract of land exclusive jurisdic-

54 tion was long before said period and subsequent to said purchase ceded to the United States by the State of New York, and ever since such cession has been exercised by the United States, together with exclusive legislation in all cases whatsoever;

That during the month of October, 1908, and for many years prior thereto and to July 7, 1898, there has existed a certain tract of land in the Borough of Manhattan, in the city of New York, in the State of New York, in the Southern District of New York, bounded by Broadway, Park Place, and Mail street, in said borough, purchased and accepted by the Congress of the United States by consent of the legislature of the State of New York, whereon has stood a needful building used by the United States as a court-house and post-office, known as the United States court-house and post-office building, over which said tract of land and building exclusive jurisdiction was long before the said period and subsequent to such purchase ceded to the United States by the said State of New York, and ever since such

cession has been exercised by the United States together with exclusive jurisdiction in all cases whatsoever:

That during the entire month of October, 1908, the post exchange mentioned in the indictment herein, at and on the aforesaid military reservation at West Point, was a regular subscriber for twenty-nine copies of defendant's aforesaid daily newspaper known as The World and as such was carried upon the defendant's regular circulation list of subscribers to its said paper:

That on each and every day in said month of October, 1908,
55 the said defendant delivered and caused to be delivered to said post exchange at and on the said military reservation at West Point twenty-nine copies of its said daily paper known as The World:

That during the entire month of October, 1908, one Walter S. Mayer was a government official, to wit, post-office inspector in charge, having his office and place of business in the aforesaid court-house and post-office building, and said Walter S. Mayer had theretofore requested the defendant to deliver to him a daily copy of its aforesaid newspaper, known as The World:

That on each day of said month of October, 1908, the defendant delivered and caused to be delivered gratuitously to said Walter S. Mayer, at and in the aforesaid United States court-house and post-office building, one copy of its said paper known as The World:

That each of said papers delivered as aforesaid to said post exchange and to said Walter S. Mayer on the 3rd day of October, 1908, contained the article set forth in the first count of the indictment herein; and that each of said papers delivered as aforesaid to said post exchange and to said Walter S. Mayer on the 4th day of October, 1908, contained the article set forth in the second count of the indictment herein; and that each of said papers delivered as aforesaid to said post exchange and to said Walter S. Mayer on the 7th day of October, 1908, contained the article set forth in the third count of the indictment herein; and that each of said papers delivered as aforesaid to said post exchange and to said Walter S.
56 Mayer on the 14th day of October, 1908, contained the article set forth in the fifth count of the indictment herein; and that each of said papers delivered as aforesaid to said post exchange and to said Walter S. Mayer on the 16th day of October, 1908, contained the article set forth in the sixth count of the indictment herein; and that each of said papers delivered as aforesaid to said post exchange and said Walter S. Mayer on the 19th day of October, 1908, contained the article set forth in the seventh count of the indictment herein.

It was admitted by the Government—

That all of the issues of The World containing the articles set forth in the indictment were printed in the defendant's said printing establishment and were put in circulation and circulated therefrom throughout the United States and throughout all of the States of the United States.

It was admitted by the Government and the defendant—

That the copies of The World for October 3rd, 4th, 7th, 14th, 16th, and 19th, respectively, which were delivered as aforesaid by the defendant at said West Point reservation (counts 1 to 7, inclusive), and the copies thereof which were delivered as aforesaid by the defendant to said Walter S. Mayer, post-office inspector in said United States court-house and post-office building, in the city of New York (counts 8 to 14, inclusive), were so printed in the defendant's said printing establishment and within the jurisdiction of the State of New York, and were so delivered as aforesaid at West Point and in the New York post-office building in the regular course of and as a part of the regular circulation of The World;

That the total circulation of The World on October 3rd, 1908, was 376,326 copies, of which number 316,456 copies were circulated in the city of New York and not upon territory within the exclusive jurisdiction of the United States, the remaining 59,870 copies
57 being spread throughout the United States; and on October 19, 1908, the total circulation of The World was 382,410 copies, of which number 323,198 copies were circulated in the city of New York and not upon any territory within the exclusive jurisdiction of the United States, the remaining 59,212 copies being spread throughout the United States; and that the total circulation of The World on the other dates of publication mentioned in the indictment was about 380,000 copies, of which upwards of 320,000 were circulated in the city of New York, but not within federal territory, the remainder being spread throughout the United States.

The Government then introduced evidence, which the defendant admitted, tended to prove the colloquium of each of the counts of the indictment.

Mr. NICOLL. If your honor please, as it now appears from the record that the newspapers containing the articles complained of were printed by the defendant in its printing office on Park Row in the city of New York, and there published; and that they were circulated to the federal territory of the United States described in the indictment, to wit, West Point and the post-office building, in this city, in the ordinary course of daily circulation, I now move that your honor quash this indictment or dismiss this proceeding, or, as your honor may be advised, instruct the jury to acquit the defendant, upon the following grounds:

First. The court has no jurisdiction in this case because there is no statute of the United States authorizing the prosecution.
58 Second. The act of 1898 does not apply to the case as disclosed by the evidence.

Third. If construed so as to cover the acts shown by the evidence, the act is unconstitutional.

Fourth. The offence, if any, was committed wholly within the jurisdiction of the State of New York and was punishable there.

Fifth. The defendant being a corporation is incapable of committing the offense charged in the indictment.

Mr. Nicoll then argued for the defendant, concluding as follows:

Mr. NICOLL. Now, for all these reasons, and reserving such other time that your honor will allow me after the district attorney closes his argument, I move that this indictment be quashed.

Mr. WISE. Now, may it please the court, Mr. Nicoll in opening his argument asserted four propositions on which he claims this court should dismiss this indictment.

First. That the court has no jurisdiction;

Second. That the act of 1898 does not apply to this case;

Third. That the act is unconstitutional; and

Fourth. That the act was committed entirely within the State of New York and is punishable there.

I believe there was another ground stated on which there was no argument. That is, a newspaper corporation could not be guilty of the crime of libel. I have not heard any argument upon that proposition, and I assume that Mr. Nicoll——

59 Mr. NICOLL. It is not necessary to argue that. It is the jurisdictional question.

Mr. WISE. I did not suppose you put any weight on that.

Mr. NICOLL. I do put great weight upon it, but the jurisdictional question is the first question.

Mr. WISE. In order that the proposition may be disposed of by the Government in the event——

The COURT. You stick to the question of jurisdiction, Mr. Wise.

Mr. Wise then argued for the Government.

The court then delivered the following opinion:

The COURT. Gentlemen, this question, deeply interesting as it is, having been presented in the necessary hurry of a jury trial, does not offer the opportunity for study and reflection that it merits; yet in the progress of the case I have formed some very definite views which enable me to dispose of the motion now.

The court is relieved of much embarassment by the form of one of the motions made. The jurisdiction of the court is peremptorily challenged by the motion to quash. Other motions have been made which will not be considered. But inasmuch as a decision under a motion to quash is now speedily reviewable by the highest court, I shall dispose of the case under that motion.

One question that has been presented is whether the sending by mail, or otherwise in the ordinary course of business of libel-

60 ous matter, to a place without the country or district of original publication constitutes a crime punishable at the place of destination. If this question be answered in the affirmative, a further question must still remain, viz, whether if such place of destination be within the exclusive jurisdiction of the United States the crime of libel so committed is cognizable in the national courts. This last question is the narrower one, it is peculiarly federal in its nature, and to that question alone the decision about to be given is directed.

This indictment is admittedly based upon the act of July 7, 1898, taken in conjunction with the appropriate portions of the penal law of New York then in force. There are some propositions regarding the jurisdiction of national courts that appear to me to be fundamental and appropriate to be remembered now. The jurisdiction of any court of the United States below the Supreme Court is statutory only. Such courts, as has been often said, though not of inferior, are of limited jurisdiction. Whatever jurisdiction they severally exercise must be based upon some act of Congress duly and constitutionally enacted. It has been admitted here in argument repeatedly, and cannot, I suppose, be denied, that the mere fact that by the same act or series of acts, crime is committed cognizable by the courts of both State and Nation, affords no reason for limiting the jurisdiction to try the offences committed to either tribunal. The offences may be punishable, and actually punished, by the tribunals of both.
61 Such may be, and has been, in many cases, the result of a double allegiance owed by every citizen, and the double authority inherent both in the separate parts and in the sum total of what the Chief Justice called an indissoluble union of indestructible States. It seems to me that when the reasons for this admitted fact are examined they will be found to rest on the fundamental proposition that the National Government, although one of delegated powers, is within the limitations of such powers, not only supreme, but exclusive of every other conceivable authority. It may well, therefore, happen that a man who robs a store does also by such breaking and entering violate the postal laws, or that one who commits a forgery does by the same false writing violate the national banking law. That last instance, I think, is an actual case that went to the Supreme Court. Such offenders subject themselves to two punishments, and they have no right to complain of apparently double punishment, because they have offended two sovereignties.

The jurisdiction exercised by the national courts, on the criminal side, nowadays, rests, as experience shows, mainly on the necessity of vindicating and sustaining the delegated powers or authority vested in the union established by the Constitution. But inasmuch as no sovereignty worthy of the name can sustain itself and properly exercise its functions without exclusive possession, ownership, and control of some territory, the United States has, from the beginning, either retained or acquired land situate probably in every State in the Union and deemed suitable for military, naval, and other national purposes. Over these reservations, or many of them, it has
62 always exercised exclusive jurisdiction, either for every purpose, or for such purposes as Congress may from time to time deem advisable. As has been said in argument, for the District of Columbia a complete system of municipal law has been devised. Whether it be competent within the limitations of the Constitution for Congress to extend that system of law to all of those places or regions over which the United States possesses exclusive jurisdiction I do not think need be now considered. It may be admitted that it

can be done, but it cannot be denied that so far as such places within the boundaries of the several States are concerned, Congress never has devised or created any complete system of law enforceable in and by the national courts.

It seems to me that there is a plain distinction between that jurisdiction which grows out of the necessary exercise of national powers and that which is based on the physical ownership of areas of land. The first basis or foundation of jurisdiction is governmental and fundamentally governmental. The existence and exercise of that species of jurisdiction is vital to the National Government, but territorial jurisdiction is merely a convenience. It is frequently a very great convenience, but it is no more than that. The criminal statutes passed in the exercise of congressional authority have always, as far as they have come under my observation, seemed to me to view offenses and offenders from one of two standpoints. The proscribed act is made an offense or crime because it either lessens the authority
63 or attacks the sovereignty, or interferes with the operation of, or injures the property of the United States; or else it is an offense against general municipal law which happens to be committed upon a place within the exclusive jurisdiction of the nation. Now, it may be; it has in the past been thought that under some circumstances the crime of libel might be considered to impair the authority and interfere with the efficiency of the Government of the United States, but so far as I know, or am informed by counsel, this thought has not found expression in any national statute now in force. Therefore in this court the crime charged in this indictment is to be regarded only as an offense against the United States, if it is an offense against the law of New York, which happened to be committed upon national land physically within the Southern District of New York; so that in my view the ultimate question, or certainly one of the ultimate questions in this case is a very narrow one, but the consequences of answering that question in favor of the prosecution seem to me also of very serious character. The place where a crime is committed, for purposes of prosecution, is notoriously one upon which a great deal of very technical learning has been spent. One is guilty of larceny, not only in the county where he takes away the goods by virtue of the original trespass with intent to steal, but in any county into which he transports the goods, the intent to steal continuing. Conspirators are responsible for their conspiracy, not only in that county wherein the original unlawful meeting of minds occurred, but in any other county where an overt act contributing to the object of the conspiracy may have been performed. So here a libel may be published in one county or in many, and
64 by the contention of the Government every publication is a new offense, or if you please, the entire series of publications constitutes a continuing offense. In this case the extremely defamatory matters printed, as set forth in the indictment and circulated, as shown by the evidence, may be assumed to have rendered the publisher liable at common law in every county in the State of New

York where publications occurred, although by the present law of New York no more than one prosecution can be maintained for that single libel.

These illustrations have occurred to me since the trial began, and might be multiplied, but these are sufficient, to my mind, to show that there were at the time when this act was passed many crimes which by their nature could give rise at common law to indictments in more places than one; and therefore the question seems most material whether it was the intention of the framers of the series of statutes of which the act of 1898 is the last, to instruct the federal courts to take cognizance of any and every offense cognizable by local municipal law, wherever such courts would have jurisdiction, if each United States district court, or the circuit court for a given district, could be regarded as a court of plenary state jurisdiction (on the criminal side) for a county consisting of all the national lands within the district. It seems to me that this is a fair statement of the ultimate problem. To put it in another way, the question is this: The libelous matter here complained of was printed and published in the county of New York. Therefore, the state court sitting in that county has jurisdiction. It was also published in the
65 county of Orange; therefore, the state court sitting in that county has jurisdiction. But it was also published in the West Point reservation, which is both in the county of Orange and the Southern District of New York, and therefore this court has jurisdiction. To the proposition that this can be true, I am unwilling to yield assent until instructed by higher authority. Most of the rules of life on national reservations are and always have been guided and controlled by the laws of the State in which the reservations are situated, and I feel that the burden of proof is upon those who assert that it was the intention of Congress in 1825, or at any subsequent time, to entrust to the circuit and district courts of the United States the punishment of offenses other than those which were either begun and ended or primarily committed on national property. In my judgment Congress has never intended to do more than this.

The very interesting history of legislation to which my attention has been called seems, as presented, to bear out this view; but it would be idle vanity on my part to pretend that most of the matter referred to in the argument has ever received my personal study or attention. I am, however, of the opinion that the construction of this act claimed by the prosecution is opposed to the spirit and tenor of legislation for many years on the subject of national territorial jurisdiction. It is a novelty, and the burden of upholding a novelty is on him who alleges it. I am the more willing to come to the conclusion now evident, because this very interesting question
66 can be lawfully presented to the Supreme Court of the United States, and I am sure that the judgment of that court should be obtained before either the time of this court or the time of jurors be occupied in going into a matter which could not, in my judgment, if exploited with a question of law of this kind hanging over it, be

determined with any profit to the public, or any benefit to the administration of justice.

It is therefore ordered that a judgment of this court be entered quashing the indictment herein, because upon the construction of the statute, hereinbefore stated, the indictment is not authorized by the statute upon which it rests.

Mr. WISE. Before that is done, I ask that a juror be withdrawn, in order that no question of jeopardy may enter into the case.

The COURT. Motion granted.

A juror was then withdrawn.

67 Forasmuch as the matters hereinabove set forth do not fully appear of record, and to the end that the same may be and become of record, and in furtherance of justice and that right may be done, the United States of America presents and tenders this its bill of exceptions herein, and prays that the same may be settled, allowed, signed, and certified by the judge who presided at the trial of this cause, as provided by law.

And it is done accordingly at the said January term as extended this 29 day of April, 1910.

C. M. HOUGH,
Judge of the United States District Court, Southern District of New York. Holding the Circuit Court.

No objection is made to the form of the foregoing bill of exceptions, and notice of settlement thereof is hereby waived.

Dated April 27, 1910.

NICOLL, ANABLE, LINDSAY & FULLER,
Attorneys for Defendant.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Apr. 29, 1910. John A. Shields, clerk.

68 *Petition for writ of error.*

United States Circuit Court for the Southern District of New York, in the Second Circuit.

UNITED STATES OF AMERICA
vs.
THE PRESS PUBLISHING COMPANY, DEFENDANT.

Now comes the United States of America, by its attorney Henry A. Wise, and complains that in the record and proceedings had in this cause and in the judgment quashing the indictment herein and dismissing the said indictment manifest error hath happened, as will appear in the assignment of errors herewith submitted, the United States of America prays for the allowance of a writ of error and

for such other orders and process as may cause the same to be corrected by the Supreme Court of the United States.

Dated February 25th, 1910.

HENRY A. WISE,
United States Attorney for the Southern District of New York, Attorney for Petitioner.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Feb. 25, 1910. John A. Shields, clerk.

69 United States Circuit Court for the Southern District of New York, in the Second Circuit.

THE UNITED STATES OF AMERICA
vs.
THE PRESS PUBLISHING COMPANY, DEFENDANT.

Assignment of errors.

The United States of America, in connection with its petition for a writ of error, makes the following assignment of errors which it alleged occurred in the decision of the court herein quashing the indictment herein, to wit:

I. The court erred in quashing the indictment herein.

II. The court erred in sustaining the motion of the defendant to quash the indictment herein.

III. The court erred in not denying the motion of the defendant to quash the indictment herein.

IV. The court erred in holding, as it did in granting the motion to quash the indictment herein, that it had no jurisdiction over the offense set forth in the indictment herein.

V. The court erred in holding, as it did in granting the motion to quash the indictment herein, that it had no jurisdiction over the offense set forth in the indictment herein as proven by the facts adduced upon the trial.

70 VI. The court erred in holding that where the proprietor of a newspaper whose printing press is not upon federal territory prints its paper at such place and thereafter circulates and causes to be circulated, delivers, and causes to be delivered copies of its papers containing libelous articles upon territory under the exclusive jurisdiction and control of the United States that the United States court for the district in which such territory is located has no jurisdiction to prosecute such proprietor for such circulation and delivery.

VII. The court erred in holding, as a matter of law, that the circulation on federal territory or on territory ceded to the United States and under the exclusive jurisdiction of the United States of a libel which is printed at a place within the exclusive jurisdiction of a State is not an offense against the United States when the publication of such article within the State in which such territory is located would be a crime under the laws of such State.

VIII. The court erred in holding, as a matter of law, that the circulation of a paper containing a libelous statement upon territory theretofore ceded to and then under the exclusive jurisdiction of the United States, which said paper had been printed at a place within the exclusive jurisdiction of a State, did not constitute a violation of the laws of the United States which could be prosecuted in the United States courts as a violation of the act of July 7, 1898, chapter 576, section 1, 30 Stat. L., 717, when the publication of such article within the State in which such territory is located would be a crime under the laws of such State.

IX. The facts adduced upon the trial herein having estab-
71 lished beyond a reasonable doubt that the defendant is and at all the times mentioned in the indictment was a corporation organized under the laws of the State of New York, and as such was at all the times mentioned in the indictment engaged in printing and circulating a newspaper known as "The World," and that on the days and dates set forth in the respective counts of the indictment it delivered at the United States court-house and post-office building in the county of New York, in the State of New York, copies of its paper containing articles of and concerning Theodore Roosevelt, William H. Taft, Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, and which were false, defamatory, and libelous, and that said United States court-house and post-office building at such times was and now is territory theretofore ceded to the United States by the State of New York, and was and is a useful and necessary building of the United States, and was and is territory under the exclusive jurisdiction and control of the United States, the court erred in holding that such delivery of such papers at such place did not constitute an offense against the United States which could be prosecuted and punished in the Circuit Court of the United States for the Southern District of New York.

X. The facts adduced by the prosecution upon the trial of this case having established beyond a reasonable doubt that the defendant is and at all the times mentioned in the indictment was a corporation organized and existing under the laws of the State of New York, and as such was at all such times engaged in printing a newspaper known as "The World," and that on the dates respectively mentioned in the respective counts of the indictment herein that said de-
72 fendant delivered and caused to be delivered copies of its newspaper containing articles of and concerning Theodore Roosevelt, William H. Taft, Douglas Robinson, Charles P. Taft, and William Nelson Cromwell which were false, defamatory, and libellous into the territory at West Point, in the county of Orange, in the State of New York, which territory then and there was territory theretofore ceded to the United States by the State of New York, and was then and there territory occupied and used by the United States as and for a fort, arsenal, and other useful purposes, and then and there was territory under the exclusive jurisdiction and control

of the United States, the court erred in holding that such delivery of such papers containing such articles upon such territory by the defendant did not constitute an offense against the United States which could be prosecuted and punished in the United States Circuit Court for the Southern District of New York.

XI. The malicious publication by writing, printing, picture or effigy otherwise than by words of mouth of and concerning a living person, which words tend to hold such person up to contempt, ridicule, scorn, or obloquy, being a criminal offense under the laws of the State of New York prior to the 7th day of July, 1898, and the defendant herein having been shown by the evidence herein to have circulated and caused to be circulated, delivered, and caused to be delivered into the territory within the United States court-house and post-office building in the county of New York, State of New York, which territory had before such circulation and delivery been ceded to the United States by the State of New York, and at the time
73 of such circulation and delivery being under the exclusive jurisdiction and control of the United States, and being a building occupied and used by the United States as a necessary and useful building, and said papers so circulated and delivered at said place at the time aforesaid by the defendant, a corporation organized and existing under the laws of the State of New York, and containing articles of and concerning living persons, to wit, Theodore Roosevelt, William H. Taft, Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, which articles are and were calculated and intended to, and did tend to, hold such persons up to ridicule, contempt, scorn, and obloquy, the court erred in holding that such circulation and delivery did not constitute an offense against the United States for which the defendant could be prosecuted and, upon conviction, punished in the United States Circuit Court for the Southern District of New York.

XII. The court erred in holding, as a matter of law, that the act of Congress of July 7, 1898, chapter 576, section 1, 30 Stat. L., 717, did not vest the United States Circuit Court for the Southern District of New York with jurisdiction to prosecute a person who produces a libelous article at a place within the exclusive jurisdiction of the State of New York, and thereafter delivers or causes the same to be delivered or circulated or published upon territory ceded to the United States and under the exclusive jurisdiction of the United States situated within the Southern District of New York.

The United States aforesaid, plaintiff in error, prays that the decision aforesaid and the order entered thereon for the errors aforesaid and other errors in the record and proceedings herein may be reversed and all together held for nothing, and that the plain-
74 tiff in error may be restored to all things which it has lost by reason of said decision and order, and that the Circuit Court be directed to vacate and set aside said order and to compel the

defendant, the defendant in error, to plead to the indictment herein, and for such other and further relief as to the court may seem proper.

Dated, February 25, 1910.

HENRY A. WISE,
United States Attorney for the Southern District of New York, Attorney for Petitioner.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Feb. 25, 1910. John A Shields, clerk.

75 By the Honorable Charles M. Hough, one of the judges of the District Court of the United States for the Southern District of New York, in the Second Circuit, to the Press Publishing Company, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the Capitol, in the city of Washington, in the District of Columbia, on the 25th day of March, 1910, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the Southern District of New York, wherein the United States of America is appellant and you are appellee, to show cause, if any there be, why the judgment in said writ mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the borough of Manhattan, in the city of New York, in the district and circuit above named, this 25th day of February, in the year of our Lord one thousand nine hundred and ten, and of the independence of the United States the one hundred and thirty-fourth.

C. M. HOUGH,
Judge of the District Court of the United States for the Southern District of New York, in the Second Circuit.

76 (Indorsed:) (Original.) United States Supreme Court. United States of America vs. The Press Publishing Company. Citation. Henry A. Wise, United States Attorney, Attorney for U. S. U. S. Circuit Court, Southern District, N. Y. John A. Shields, clerk.

Due and timely service of a copy of the within citation is hereby admitted.

Dated, New York, Feb. 25, 1910.

NICOLL, ANABLE, LINDSAY & FULLER,
Attys. for Press Pub. Co.

(Indorsed on cover:) File No. 22,151. S. New York, C. C. U. S. Term No. 541. The United States, plaintiff in error, vs. Press Publishing Company. Filed May 9th, 1910. File No. 22,151.

In the Supreme Court of the United States.

OCTOBER TERM, 1909.

THE UNITED STATES, PLAINTIFF IN ERROR, *v.* PRESS PUBLISHING COMPANY. } No. 925.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

MOTION TO ADVANCE.

An indictment was found March 4, 1909, against the defendant in error in the Circuit Court of the United States for the Southern District of New York under the act of July 7, 1898 (ch. 576, 30 Stats., 717), charging it with the crime of libel committed upon the federal territory of West Point, N. Y., and the post-office building, New York, N. Y., in publishing upon these reservations copies of its papers containing libelous articles defaming William H. Taft, Douglas Robinson, Theodore Roosevelt, William Nelson Cromwell, Charles P. Taft, and others in its accounts of certain alleged transactions connected with the purchase by the United States of the Panama Canal.

The defendant interposed a motion to quash the indictment upon the ground that the court was without jurisdiction of the crime of libel charged in the indictment. The court granted the motion upon the ground that in his construction of the statute the United States had no jurisdiction of the case. An order granting the motion was entered February 25, 1910. The United States sued out a writ of error under the Criminal Appeals Act of March 2, 1907 (34 Stat., 1246), and the term of the court was extended, for the purpose of settling the bill of exceptions by successive orders, until April 30, 1910.

The construction of this statute and the question raised is of great importance, and there are other cases in connection with which the question raised herein will be involved, and for this reason and because of the provisions of the Criminal Appeals Act that cases arising thereunder "shall be diligently prosecuted and shall have precedence over all other cases," the Solicitor-General moves the court to advance the case on the docket and set it down for hearing on a day convenient to the court during the next term.

Notice of this motion has been served upon opposing counsel.

LLOYD W. BOWERS,
Solicitor-General.

MAY, 1910.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1910.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
PRESS PUBLISHING COMPANY.
No. 541.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This is a writ of error sued out by the United States to review a judgment of the Circuit Court for the Southern District of New York quashing an indictment for libel and is prosecuted under the Act of March 2, 1907 (34 Stat., 1246), which provides—

> That a writ of error may be taken by and on behalf of the United States from the district or circuit courts direct to the Supreme Court of the United States in all criminal cases, in the following instances, to wit:
>
> From a decision or judgment quashing, setting aside, or sustaining a demurrer to any

indictment, or any count thereof, where such decision or judgment is based upon the invalidity or construction of the statute upon which the indictment is founded.

* * * *

From the decision or judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy.

* * * *

The Press Publishing Company, defendant in error, was indicted March 4, 1909, in the Southern District of New York for libel committed by publishing in its newspaper called The World certain articles defaming and maligning William Howard Taft, Theodore Roosevelt, Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, by charging them with gross corruption in connection with the purchase by the United States of the Panama Canal. The libelous articles appeared in The World of October 3, 4, 7, 14, 16, and 19, 1908. (Rec., 81.) The indictment is in fourteen counts and charges that the defendant in error, at West Point and in the post-office building at New York, in manner and form and at the time aforesaid, and in a place which had been ceded to and was, and is, under the jurisdiction of the United States, unlawfully did commit the offense of falsely, wickedly, knowingly, maliciously, and scandalously composing, writing, printing, and publishing a criminal libel upon the said William Howard Taft, Theodore Roosevelt, Douglas Robinson, Charles P. Taft, and William Nelson Cromwell, to their great damage, scandal, infamy, and disgrace,

to the evil example of all others in like case offending, and against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided (R., 4).

In effect the published articles charge that Charles P. Taft, Douglas Robinson, and William Nelson Cromwell, with J. Pierpont Morgan and others, acting through an American syndicate, obtained control of the securities of the French company which owned the Panama Canal route and its properties for the approximate sum of $3,000,000. Aided by the intimacy which they enjoyed with Theodore Roosevelt, then President of the United States and brother-in-law of Douglas Robinson, and William H. Taft, then Secretary of War and brother of Charles P. Taft, and by the cooperation of these officials with them, they were enabled to effect the sale of the Panama Canal to the United States for $40,000,000 and reap a profit of some $36,000,000, which was divided, as charged, "among government favorites in the world of politics and finance." (Rec., 5, 25.) The articles elaborated this charge into further charges, that the records of the French company had been turned over secretly to the Roosevelt administration and had been destroyed, and that it was impossible to ascertain officially details of the transaction. (Rec., 40, 41.) It was charged that the French company had vanished, that "Washington knew the canal grafters," and that the revolution in Panama was manufactured to the end of consummating the corrupt transaction. (Rec., 41, 42.)

The defendant pleaded not guilty March 15, 1909 (Rec., 81), and on January 25, 1910, the cause went to trial on this plea. A jury was impaneled and sworn and thereafter the following proceedings were had:—

It was admitted by the defendant in error that it was a corporation which, during October, 1908, had its printing establishment in the Pulitzer Building, Park Row, Borough of Manhattan, city of New York; that this was a place within the jurisdiction of the State of New York and not a place within the exclusive jurisdiction of the United States; that it printed its newspaper known as The World at that time in the said Pulitzer Building and at no other place; that during October, 1908, and for many years prior thereto and to July 7, 1898, the military reservation at West Point, in Orange County, N. Y., in the Southern District of New York, was and had been a tract of land purchased and accepted by the Congress of the United States by the consent of the legislature of said State of New York, and used by the United States as a fort and military post and reservation under the name of West Point, and over which exclusive jurisdiction was ceded to the United States long before said period by the State of New York and subsequent to the said purchase, and that ever since such cession exclusive jurisdiction has been exercised by the United States.

It was admitted further that during the month of October, 1908, and for many years prior thereto and to July 7, 1898, the United States exercised exclusive

jurisdiction over a certain tract of land in the Borough of Manhattan, city of New York, and in the Southern District of New York, bounded by Broadway, Park place, and Mail street, upon which stood the post-office building, and which said tract of land had been purchased and accepted by the Congress of the United States by the consent of the legislature of the State of New York, and on which the said United States has maintained a needful building, used by it as a court-house and post-office. (Rec., 86.)

It was admitted further that on each and every day during the month of October, 1908, the defendant in error delivered upon the post exchange mentioned in the indictment, upon the aforesaid military reservation at West Point, twenty-nine copies of the defendant's newspaper, known as The World. The post exchange was carried on defendant's regular circulation list as a subscriber. During the same period of time the defendant in error also delivered to one Walter S. Mayer, a post-office inspector in charge, at his place of business in the aforesaid court-house and post-office building, a daily copy of its newspaper, known as The World. Such daily copy was delivered to the said Mayer gratuitously and at his request.

It was admitted further by the defendant that all of the papers delivered as aforesaid, at West Point and the post-office building in New York City, contained the articles set out in the different counts of the indictment. (Rec., 87.)

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The Government admitted that all of the issues of the newspaper called The World containing the articles aforesaid were printed at the printing establishment of the defendant in error in Park Row, city of New York, and were circulated therefrom throughout the United States and all of the States, and were circulated and published upon the Federal territory at West Point and in the post-office and court-house building in New York City in the regular course of the defendant's business.

The Government then introduced some evidence which, the defendant admitted, tended to prove the colloquium of each of the counts of the indictment. (Rec., 88.)

Thereupon, on January 26, 1910, counsel for the defendant in error, addressing the court, said (Rec., 88):

"If your honor please, as it now appears from the record that the newspapers containing the articles complained of were printed by the defendant in its printing office on Park Row in the city of New York, and there published; and that they were circulated to the federal territory of the United States described in the indictment, to wit, West Point and the post-office building in this city, in the ordinary course of daily circulation, I now move that your honor quash this indictment or dismiss this proceeding, or, as your honor may be advised, instruct the jury to acquit the defendant, upon the following grounds:

"First. The court has no jurisdiction in this case because there is no statute of the United States authorizing the prosecution.

"Second. The act of 1898 does not apply to the case as disclosed by the evidence.

"Third. If construed so as to cover the acts shown by the evidence, the act is unconstitutional.

"Fourth. The offense, if any, was committed wholly within the jurisdiction of the State of New York and was punishable there.

"Fifth. The defendant, being a corporation, is incapable of committing the offense charged in the indictment."

Mr. Nicoll then argued for the defendant, concluding as follows:

"Now, for all these reasons, and reserving such other time that your honor will allow me after the district attorney closes his argument, I move that this indictment be quashed." (Rec., 88 89.)

After hearing argument the court delivered an opinion, set out in the record at pages 89 and 93, in which among other things it said:

> The court is relieved of much embarrassment by the form of one of the motions made. The jurisdiction of the court is peremptorily challenged by the motion to quash. Other motions have been made which will not be considered. But inasmuch as a decision under a motion to quash is now speedily reviewable by the highest court, I shall dispose of the case under that motion. (Rec., 89.)
>
> * * * * *
>
> It is therefore ordered that a judgment of this court be entered quashing the indictment herein, because upon the construction of the

> statute, hereinbefore stated, the indictment is not authorized by the statute upon which it rests. (Rec., 93.) (Act of July 7, 1898, 30 Stat., chap. 576, p. 717, assimilative statute.)

Thereupon the United States attorney said: "Before that is done, I ask that a juror be withdrawn in order that no question of a jeopardy may enter into the case."

> "The COURT. Motion granted. A juror was then withdrawn." (Rec., 93.)

On the 25th day of February, 1910, the following final judgment was entered:

> An indictment against the Press Publishing Company, the defendant above named, having been found and filed by the grand jurors of the United States in and for the Southern District of New York, in the office of the clerk of the United States Circuit Court for the Southern District of New York on the 4th day of March, 1909, and thereafter the defendant above named having been arraigned and having thereupon interposed a plea of not guilty, and the issues raised by said plea having been thereafter brought on for trial, and a jury thereupon having been drawn, empaneled, and sworn, and the Government having presented certain evidence in support of the allegations contained in the indictment, and thereupon on the 26th day of January, 1910, the defendant having made a motion herein to quash the indictment herein; and after hearing argument thereon now on motion of De Lancey Nicoll, esq., counsel for the defendant, it is

> Ordered and adjudged that the said motion to quash be, and the same hereby is, granted, and the indictment is hereby quashed, set aside, and declared to be null and void because the indictment is not authorized under any construction of the act of Congress upon which it is alleged to be predicated, to wit, the act of Congress of July 7, 1898, chapter 576, section 1, 30 Stat. at Large, at page 717, or under the construction of any other statute of the United States now in force. (Rec., 82–3.)

A bill of exceptions was duly settled and the United States sued out this writ of error. (Rec., 85–93.)

The substantial question here is whether the United States courts have jurisdiction under the act of July 7, 1898 (Chap. 576, 30 Stat., 717), to punish a corporation which printed in the city of New York a newspaper containing a libel criminal under the laws of the State of New York and circulated copies of the same within the Federal territory of West Point.

ARGUMENT.

I.

THE CAUSE IS NOT NOW A MOOT ONE AND MAY BE CONSIDERED UNDER THIS WRIT OF ERROR.

The indictment being sufficient, the defendant was in jeopardy after the jury was sworn and evidence introduced and when the motion to quash was made by its counsel. The jury was discharged before rendering a verdict. But the cases clearly estab-

lish "that courts of justice are invested with the authority to discharge a jury from giving any verdict whenever, in their opinion, taking all the circumstances into consideration, there is a manifest necessity for the act, or the ends of public justice would otherwise be defeated, and to order a trial by another jury; and that the defendant is not thereby twice put in jeopardy within the meaning of the Fifth Amendment to the Constitution of the United States." (*Thompson* v. *United States*, 155 U. S., 271, 274.) It is also quite clear that under certain circumstances a defendant who procures a judgment against him upon an indictment to be set aside, or expressly or impliedly consents to the discharge of a jury after jeopardy has attached, may be tried anew upon the same indictment or upon another for the same offense. (*United States* v. *Ball*, 163 U. S., 662, 672; *United States* v. *Jones*, 31 Fed., 725; *Coleman* v. *Tennessee*, 97 U. S., 509, 521; *Joy* v. *State*, 14 Ind., 139; Cooley's Constitutional Limitations, 7th ed., 468–470.)

The motion to quash was manifestly irregular at the time it was presented. But the Government submits that considering the whole record the defendant by the action of its counsel procured and consented to the discharge of the jury, and that it may be put on trial again. Consequently, the case is not now a moot one. We are informed that the counsel for the defendant in error, both in the court below and here, accept the view that such was the result of their action.

II.

HISTORY AND INTERPRETATION OF THE ASSIMILATIVE STATUTE.

This case does not involve the question whether the United States courts have common-law jurisdiction of libel. We assume that the authority of the circuit court to entertain this prosecution rests upon statutory basis. It is the common jurisdiction granted by a series of congressional statutes in all cases where an act is committed upon Federal territory which if committed in the State where the territory lies would be punishable there.

The act of July 7, 1898 (chapter 576, 30 Stat., 717), the assimilative statute, was one of a number enacted by Congress for the purpose of enabling the United States to punish offenses committed upon Federal territory, but not covered by the general provisions of Federal law. It operates to transfer the state law to Federal territory for the purpose of punishing acts committed there which, if performed outside and in the jurisdiction of the State, would be amenable to its laws.

The first Federal crimes act was passed April 30, 1790; it mentioned and defined only the major crimes, such as treason, murder, perjury, bribery, piracy, and the like. When it was put into operation, its insufficiency to protect the United States in the numerous cases of crimes not specifically named was exposed and became a matter of general knowledge.

To supply this need Congress passed the first assimilative statute of March 3, 1825 (4 Stat., 115), written by Judge Story, and entitled "An act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes." Sections 1 and 2 provide for the punishment of arson committed within any fort, navy-yard, dockyard, arsenal, armory, or magazine over which the United States has jurisdiction, or on the site of any light-house or other needful building belonging to the United States. Section 3 reads as follows:

> *And be it further enacted*, That if any offense shall be committed in any of the places aforesaid, the punishment for which offense is not especially provided for by any law of the United States, such offense shall, upon conviction in any court of the United States having cognizance thereof, be liable to, and receive the same punishment as the laws of the State in which said fort, dockyard, navy-yard, arsenal, armory, or magazine, or other place, ceded as aforesaid, is situated, provide for the like offense when committed within the body of any county of such State.

This statute was construed shortly after its passage in *United States* v. *Paul* (6 Peters, 141), wherein this court held that "the laws of the State" were only those in force March 3, 1825.

Congress passed another assimilative statute April 5, 1866 (c. 24, 14 Stat., 13). Section 1 prohibited forging bonds, etc. Section 2 reads as follows:

> *And be it further enacted*, That if any offense shall be committed in any place which has

> been, or shall hereafter be, ceded to and under the jurisdiction of the United States, which offfense is not prohibited or the punishment thereof is not especially provided for by any law of the United States, such offense shall, upon conviction in any court of the United States having cognizance thereof, be liable to, and receive the same punishment as the laws of the State in which such place is, or may be situated, now in force, provide for the like offense when committed within the jurisdiction of such state; and no subsequent repeal of any such state law shall affect any prosecution for such offense in any of the courts of the United States.

In the Revised Statutes of 1877 the assimilative statute was brought down to date and incorporated as section 5391, which is as follows:

> If any offense be committed in any place which has been or may hereafter be, ceded to and under the jurisdiction of the United States, which offense is not prohibited, or the punishment thereof is not especially provided for by any law of the United States, such offense shall be liable to, and receive, the same punishment as the laws of the State in which such place is situated, now in force, provide for the like offense when committed within the jurisdiction of such State; and no subsequent repeal of any such state law shall affect any prosecution for such offense in any court of the United States.

In 1898 Congress enacted the fourth assimilative statute, the one now under consideration. Section 2 reads as follows:

> That when any offense is committed in any place, jurisdiction over which has been retained by the United States, or ceded to it by a State, or which has been purchased with the consent of the State for the erection of a fort, magazine, arsenal, dockyard, or other needful building or structure, the punishment for which offense is not provided for by any law of the United States, the person committing such offense shall upon conviction in the Circuit or District Court of the United States for the district in which the offense was committed, be liable to and receive the same punishment as the laws of the State in which said place is situated now provide for the like offense when committed within the jurisdiction of such State, and the said courts are hereby vested with jurisdiction for such purposes; and no subsequent repeal of any such state law shall affect any such prosecution. (30 Stat., 717.)

The last assimilative statute (not involved herein) was passed March 4, 1909 (c. 321, 35 Stat., 1145), effective January 1, 1910. See U. S. Compiled Stats., Sup. 1909, p. 1477.

In view of *United States* v. *Paul, supra,* the indicated intention of Congress has been to keep the National Government abreast of the times by enabling it to use the recent statutes of the States,

and thereby adjust its criminal code to existing conditions.

These statutes have been considered in many cases. They are cited at length in a note appended to *Franklin* v. *United States* (216 U. S., 559), wherein the act of 1898 is declared to be unobjectionable.

It has been held that a post-office is "a place" within the meaning of the act of 1898 (*United States* v. *Andem*, 158 Fed., 996); that the assimilative statute applied to the crime of stabbing with intent to kill committed upon a lock on a navigable stream (*United States* v. *Tucker*, 122 Fed., 518); and that the act applies to criminal conduct or a contempt committed in the chambers of a federal judge, which are within the definition of "a place." (*Sharon* v. *Hill*, 24 Fed., 726–731.)

III.

CRIMINAL LIBEL UNDER THE NEW YORK STATUTES AND AT COMMON LAW.

The following provisions of the New York Penal Code of 1881 were in force in 1898.

> SEC. 242. *Libel defined.*—A malicious publication, by writing, printing, picture, effigy, sign, or otherwise than by mere speech, which exposes any living person, or the memory of any person deceased, to hatred, contempt, ridicule, or obloquy, or which causes, or tends to cause, any person to be shunned or avoided, or which has a tendency to injure any person, corporation or association of persons, in his or their business or occupation, is a libel.

SEC. 243. *Libel a misdemeanor.*—A person who publishes a libel, is guilty of a misdemeanor.

SEC. 244. *Malice presumed; defense to prosecution.*—A publication having the tendency or effect mentioned in section thirteen hundred and forty is to be deemed malicious, if no justification or excuse therefor is shown.

The publication is justified when the matter charged as libelous is true, and was published with good motives and for justifiable ends.

The publication is excused when it is honestly made, in the belief of its truth and upon reasonable grounds for this belief, and consists of fair comments upon the conduct of a person in respect of public affairs, or upon a thing which the proprietor thereof offers or explains to the public.

SEC. 245. *Publication defined.*—To sustain a charge of publishing a libel, it is not necessary that the matter complained of should have been seen by another. It is enough that the defendant knowingly displayed it, or parted with its immediate custody, under circumstances which exposed it to be seen or understood by another person than himself.

SEC. 246. *Liability of editors and others.*—Every editor or proprietor of a book, newspaper, or serial, and every manager of a partnership or incorporated association, by which a book, newspaper, or serial is issued, is chargeable with the publication of any matter contained in such book, newspaper, or serial. But in every prosecution for libel the defendant may show in his defense that the matter

complained of was published without his knowledge or fault and against his wishes by another who had no authority from him to make the publication and whose act was disavowed by him so soon as known.

SEC. 249. *Indictment for libel published against resident.*—An indictment for a libel, contained in a newspaper published within this State, against a resident thereof, may be found either in the county where the paper was published, or in the county where the person libeled resided when the offense was committed. In the latter case the defendant is entitled to an order of the Supreme Court, directing the indictment against him to be tried in the county in which the paper was printed and published, upon compliance with the following conditions:

1. He must apply for the order within thirty days after being committed upon, or giving bail to answer, the indictment;

2. He must execute a bond to the complainant, with two sufficient sureties, approved by the judge hearing his application, in a penal sum fixed by the judge, not less than two hundred and fifty nor more than one thousand dollars, conditioned for the payment, in case the defendant is convicted, of all the complainant's reasonable expenses in going to and from his place of residence and the place of trial, and in attendance upon the trial;

3. He must, within ten days after the granting of the order, file the order and deposit the bond with the clerk of the county in which the indictment is pending.

> SEC. 250. *Indictment for libel published against nonresident.*—An indictment for a libel published against a person not a resident of this State must be found and tried in the county where the paper containing the libel purports upon its face to be published; or, if no county is indicated upon the face of the paper, in any county where the paper was circulated.
>
> SEC. 251. *Restriction on indictment for libel.*—A person can not be indicted or tried for the publication of the same libel, against the same person, in more than one county.

Except as modified by the foregoing statutory provisions, the general rule of the common law as to the place where one may be prosecuted for libel prevails in New York.

It is settled that the crime of libel does not consist in the mere composition of the article or the physical production of the paper, but in exposing or publishing the defamatory matter to the community. Roscoe Crim. Ev., Vol. II, 890, 897; Wharton Crim. Law (8th ed.), 1618 *et seq.;* Bishop Crim. Law (6th ed.), Vol. II, 905, 927, 949; Townsend Slander and Libel (3d ed.), 144.

One who writes a libel in one county with intent to publish and who afterwards publishes it in another may be indicted in both. (Am. and Eng. Enc., vol. 18, 1119 and cases cited.)

In *Com.* v. *Blanding* (3 Pick., 304) the defendant, in Providence, R. I., delivered the libelous article to a newspaper printed in that city which

had some circulation across the Massachusetts line in Bristol County. He was indicted in Massachusetts. It was contended that there was no evidence that the writing was composed or published in Bristol County. Speaking for the court, Parker, C. J., said:

> We think the admitted facts, that it was at the request of the defendant inserted in a public newspaper printed in Providence, which, though in another State, borders on the county of Bristol, and that that paper usually circulates in the town of Rehoboth, in that county, and that the number containing the libel was actually received and did circulate in that town, were competent and conclusive evidence of a publication in the county of Bristol. In this respect the case is like that of *Rex* v. *Burdett* (4 B. and A., 95).

The *Blanding* case was approved by this court in the *Palliser* case (136 U. S., 257, 266), where it is said:

> When an offense is committed by means of a communication through the post-office, the sender has sometimes * * * been held to be punishable at the place where he mails the letter * * * but it does not follow that he is not punishable at the place where the letter is received by the person to whom it is addressed: and it is settled by an overwhelming weight of authority that he may be tried and punished at that place, whether the unlawfulness of the communication through the post-office consists in its being a threatening letter

(*Rex* v. *Girdwood*, 1 Leach, 142; S. C. 2 East P. C. 1120; *Esser's case*, 2 East P. C. 1125) or a libel (*Rex* v. *Johnson*, 7 East, 65; S. C., 3 J. P. Smith, 94; *Rex* v. *Burdett*, 4 B. and Ald., 95, 136, 150, 170, 184; *Com.* v. *Blanding*, 3 Pick., 304; *In re Buell*, 3 Dill., 116, 122).

In the case of *In re Cook* (49 Fed., 833) the court, considering the question of the defendant's liability to criminal prosecution in a jurisdiction from which he was absent at the time when the crime was committed, said:

> His actual presence at the time is unessential. In contemplation of law, he is present by his agent deputed to perform the wrongful act he has planned. * * * His will contributed to the wrongdoing, and he is responsible for the act done by his agent by his authority, the same as though performed by himself alone. It is because his will set the force in motion that was operative to crime. Thus, Mr. Bishop observes, one may commit an offense within a State upon whose soil he has never set his foot, as in putting forth a libel. (*Com.* v. *Blanding*, 3 Pick., 304.)

In the recent case of *Armour Packing Company* v. *United States* (153 Fed., 1–5), the Circuit Court of Appeals for the Eighth Circuit used this language:

> The general principle that one who commits a criminal act in one county, State, or district may be held liable for its continuous operation in another to which its effect extends, is established by these and many other authorities, such as those involving the maintenance of a nuisance in one county which affects

> property in another * * * and those involving the publication of a libel in a newspaper in one jurisdiction which circulates in another (*Com.* v. *Blanding*, 3 Pick., 304; 15 Am. Dec., 214), and yet in all these cases the offense may be complete in the jurisdiction in which it is first committed, and still be indictable and punishable in those in which its continuing operation and effect extend.

The same doctrine has found later enunciation in the Supreme Judicial Court for Massachusetts in *Com.* v. *Macloon* (101 Mass., 1) and *Com.* v. *Pettes* (114 Mass., 307–311).

In 1873 it was sought to remove the publisher of the New York Sun from the Southern District of New York to the District of Columbia for trial upon an information for libel committed by the circulation of a copy of his paper there. The paper was printed in New York City and a copy of it circulated in Washington. Judge Blatchford, then on the District bench, refused the warrant of removal because under the laws of the District of Columbia the prosecution was based upon information only and not upon indictment, and the trial proposed was therefore opposed to the provisions of the Fifth Amendment. Afterwards Judge Blatchford, as a member of this court, participated in the decision of the *Palliser* case, *supra*, wherein the court referred to the removal proceeding (*In re Dana*, 7 Ben., 1) before him, and said:

> A warrant to remove to the District of Columbia a person alleged to have printed a

> libel in a newspaper published in New York, and circulated by his authority in the District of Columbia, was refused by Mr. Justice Blatchford, then District Judge, not because the offense could not be punished in the District of Columbia, but because the law of that District provided for its prosecution by information only, and was therefore unconstitutional. (*In re Palliser*, 136 U. S., 257, 367.)

The same doctrine was also upheld by Judge Dillon in the case of *In re Buell* (3 Dill, 116), where the court said that the proprietor of a paper published in Detroit might be indicted in Washington for a libel contained in such paper if circulated in the District of Columbia.

In the case of *Haskell* v. *Bailey* (25 U. S. App., 99) it was held that a civil action for libel lay in Virginia in favor of a person reflected upon in an article in a paper published in Tennessee and circulated in Virginia, where such article was libelous under the laws of Virginia and not libelous under the laws of Tennessee, since publication was the gravamen of the offense.

In the case of *State* v. *Kountz* (12 Mo. App., 511) the proprietor of a newspaper printed in Pennsylvania was indicted in Missouri for the offense of libel committed by the circulation of one copy of that paper in Missouri. The court held the offense complete and that one copy was as good as a thousand.

And this general doctrine is affirmed in *Burton* v. *United States* (202 U. S., 344, 388).

IV.

THE ACT OF JULY 7, 1898, APPLIES TO A LIBEL CIRCULATED IN WEST POINT OR THE POST-OFFICE BUILDING, ALTHOUGH PRINTED OUTSIDE.

The same act or series of acts may constitute an offense equally against the United States and the State subjecting the guilty party to punishment under the laws of each government. (*Cross* v. *N. C.*, 132 U. S., 131–139.)

West Point and the post-office building are places over which the United States has exclusive jurisdiction within the terms of section 2 of the act of 1898.

The Constitution gives Congress plenary legislative power over such places. Offenses committed therein are against the national sovereignty. That Congress has power to provide for all crimes against the United States is incontestable. This may be done by original statutes or by adopting the existing legislation of States. The latter method was adopted in the act of 1898.

Circulating defamatory written or printed statements within the limits of West Point or the post-office building constitutes an offense against the United States—not the State. And Congress has declared that this offense shall be punished in the Federal courts according to the provisions of the law of New York. Otherwise it could not be punished at all.

The defendant insists that it was not the purpose of Congress to include libel within the provisions of the act of 1898 where the article was printed outside, and only circulated within, the Federal jurisdic-

tion, and attempts to support this contention by references to the history of the act, and especially by dwelling on the inconveniences which might result. The general language of the statute being broad enough to support the Government's position, the burden is upon defendant to establish that the present case is an exception.

The court below cited no direct authority and there is none to support its position. At different times Congress has passed assimilative acts without attempting to except libel from their general terms. The last was approved on March 4, 1909. On the other hand, it has distinctly recognized that all crimes were intended to be included therein. Thus section 2145, R. S., extends the laws of the United States to the Indian country, but section 2146 expressly restricts the operation of the assimilative act and specifies the crimes for which Indians shall be punished. (See *United States* v. *King*, 81 Fed., 625.)

It is not only the right but the duty of Congress to so legislate concerning territory under its exclusive jurisdiction as to preserve peace and good order therein. A libel is criminal because of its ill-effect upon the community where circulated, and there is no reason why those within exclusive Federal jurisdictions should be subjected with impunity to the peculiar evils arising therefrom. Because one may be punished for issuing a libel in New York is no reason for allowing him to go free of all punishment for circulating it at West Point. The people in the latter place are entitled to protection.

It is highly important that legislation concerning criminal matters should take into consideration the peculiar conditions of the particular community. If Congress should undertake to do this for all places under the exclusive jurisdiction of the United States and pass a complete code for each, the difficulties would be enormous. A much better result has been accomplished by adopting the state law applicable in the vicinity.

Doubtless much can be said concerning the inconvenience which will result to those who traffic in defamatory articles if subjected to prosecutions in sundry places where their libels are circulated. But the inconvenience which may be suffered by criminals has not generally been regarded as adequate reason for permitting them to operate without restraint.

No substantial reason can be advanced in favor of exempting from prosecution in the Federal courts a publisher who prints his newspaper in New York City and circulates it in West Point, which would not apply if he circulated it in the District of Columbia.

The suggestion that the offense charged may be punished in New York and therefore was not intended to be included in the act of 1898 is without merit, for the obvious reason that the State of New York can not punish an offense committed at West Point against the United States. Such offense must

be punished as here attempted, or be "dispunishable." (See *United States* v. *Davis*, 5 Mason, 356. Opinion by Story, J.)

We submit that the court below erred and that the judgment entered there should be reversed.

GEORGE W. WICKERSHAM,
Attorney-General.
JAMES C. MCREYNOLDS,
STUART MCNAMARA,
Special Assistants to the Attorney-General.

OCTOBER, 1910.

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JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1910.

No. 541.

THE UNITED STATES, *Plaintiff in Error*,

vs.

PRESS PUBLISHING COMPANY.

Brief for the Defendant in Error.

DE LANCEY NICOLL,
JOHN D. LINDSAY,
RAYMOND D. THURBER,
Of Counsel.

THE EVENING POST JOB PRINTING OFFICE, 156 FULTON ST., N. Y.

Supreme Court of the United States,

OCTOBER TERM, 1910.

No. 541.

THE UNITED STATES, Plaintiff in Error,

vs.

PRESS PUBLISHING COMPANY.

BRIEF FOR THE DEFENDANT IN ERROR.

This is a writ of error to the Circuit Court of the United States for the Southern District of New York, sued out by the United States under the Criminal Appeals Act of 1907 (34 Stat. 1246), to review a judgment quashing an indictment, such judgment being based upon the construction of the statute (Act of July 7, 1898; 30 Stat. 717) upon which the indictment rests.

The Indictment.

The indictment contains fourteen counts, and is predicated upon the circulation in federal territory of six alleged libellous articles which appeared in the defendant's newspaper, *The World*, in its issues of October 3, 4, 7, 14, 16 and 19, 1908.

All of the counts except the fourth and eleventh charge that the defendant, "contriving and . . . intending to injure" Theodore Roosevelt, then President of the United States, Douglas Robinson, his brother in law, William Howard Taft, Secretary of War at the time in question, Charles P. Taft, his

brother, and William Nelson Cromwell, an attorney at law practicing in the City of New York, to excite them to breaches of the peace, "and otherwise to *stir up disorder among the people*," composed, wrote, printed and published the alleged libels at and within the "fort and military reservation of West Point," in the Southern District of New York (Record, pp. 4, 11, 24, 30, 34, 39, 46), such *publication* being accomplished by delivering "for perusal by persons residing at the said military post and reservation" twenty-nine copies of each of the issues at a store in West Point known as the Post Exchange (pp. 8, 21, 27, 31, 36, 42–3, 50). The remaining seven counts charge that the defendant composed, wrote, printed and published the alleged libels at and within the United States post office building, in the Borough of Manhattan of the city of New York, in the same district (pp. 54, 58, 62, 66, 70, 74, 79), and that their *publication* was accomplished by delivering one copy of each issue "to one Walter S. Mayer, post office inspector in charge, at his office in room 106 of the said post office building" (pp. 55, 59, 63–4, 66–7, 70–71, 75, 79).

The fourth and eleventh counts charge that the article of October 7th was published in like manner, but that it constituted a libel on Robinson, Charles P. Taft and Cromwell only; and this accounts for the fact that there are seven, instead of six, counts in each series.

The articles relate to certain alleged conduct of the individuals above named, and are averred to have been published not only of and concerning these persons, but also of and concerning the "matter of the acquisition and purchase . . . by *the Government of the United States*, for the sum of $40,000,000 from the . . . *Compagnie Nouvelle du Canal de Panama* of its . . . property and proprietary rights at the Isthmus of Panama, preliminary to the construction by the Government of the United States of the Panama Canal across that Isthmus" (pp. 4, 12, 25, 30, 34, 40, 46, 54, 58, 62, 66, 70, 75, 79).

The Statute.

The indictment is founded on the Act of July 7, 1898, entitled, " An Act to Protect the Harbor Defenses and Fortifications Constructed or Used by the United States from Malicious Injury, and for Other Purposes " (30 Stat., 717). It reads as follows:

> " That when any offence is committed in any place, jurisdiction over which has been retained by the United States, or ceded to it by a State, or which has been purchased with the consent of a State for the erection of a fort, magazine, arsenal, dock-yard, or other needful building or structure, the punishment for which offence is not provided for by any law of the United States, the person committing such offence, *shall*, upon conviction in a circuit or district court of the United States for the district in which the offence was committed, *be liable to and receive the same punishment as the laws of the State in which such place is situated now provide for the like offence*, when committed within the jurisdiction of such State, and the said courts are hereby vested with jurisdiction for such purpose; and no subsequent repeal of any such State law shall affect any such prosecution."

This statute was modeled upon the Act of March 3, 1825 (4 Stat., 115), which was the first Federal enactment of this character. The Act of 1825 was entitled, " An Act More Effectually to Provide for the Punishment of Certain Crimes Against the United States, and for Other Purposes." Sections I and II provided for the punishment of arson

> " when committed within any fort, dock-yard, navy-yard, arsenal, armory or magazine, the site whereof is ceded to and under the jurisdiction of the United States, or on the site of any lighthouse or other needful building belonging to the United States, the site whereof is ceded to them and under their jurisdiction as aforesaid."

Section III was as follows:

> "*And be it further enacted* That if any offence shall be committed in any of the places aforesaid, the punishment of which offence is not specially provided for by any law of the United States, such offence shall, upon a conviction in any court of the United States having cognizance thereof, be liable to and receive the same punishment as the laws of the state in which such fort, dock-yard, navy-yard, arsenal, armory, or magazine, or other place ceded as aforesaid is situated, provide for the like offence when committed within the body of any county of such state."

The remaining sections defined and prescribed the punishment of various other offences, but made no reference to the crime of libel.

The third section of the act was first considered by the courts in United States *v.* Paul (6 Peters, 141), in which it was held that the words "the laws of the state" meant only the laws in force at the time of the passage of the act, to wit, the 3rd of March, 1825.

In United States *v.* Barney (5 Blatchford, 294), the Circuit Court imposed a further limitation of this section by deciding that it applied only to places that had been ceded to the United States prior to its enactment. In view of this decision, Congress adopted an amendment, inserting before the word "ceded," the words "or may hereafter be." That was accomplished by the second section of the Act of April 5, 1866 (14 Stat., p. 13), providing:

> "That if any offence be committed in any place which has been, or shall hereafter be, ceded to, and under the jurisdiction of the United States, which offence is not prohibited, or the punishment thereof is not especially provided for, by any law of the United States, such offence shall . . . be liable to, and receive, the same punishment as the laws of the State in which such place is, or may be situated, now in force, provide for the like

> offence when committed within the jurisdiction of such State; and no subsequent repeal of any such State law shall affect any prosecution for such offence in any court of the United States."

This provision was re-enacted, without any substantial change, as Section 5391 of the Revised Statutes.

Later on, another infirmity was observed in the fact that it did not cover cases where federal reservations had not been acquired by purchase, but were simply carved out of the public domain and jurisdiction retained by the United States. This was sought to be cured by the Act of 1898, upon which the indictment in the case at bar was framed. This act also omits the surplus words of the former statute, "which offense is not prohibited."

The judgment of the Circuit Court.

At the trial a jury was impaneled and sworn (Record, p. 86). Certain facts were then stipulated, and the Government also gave certain proof (pp. 86-88).

It was admitted by both parties:

> "That the total circulation of THE WORLD on October 3rd, 1908, was 376,326 copies, of which number 316,456 copies were circulated in the city of New York, and not upon territory within the exclusive jurisdiction of the United States, the remaining 59,870 copies being spread throughout the United States; that on October 19, 1908, the total circulation of THE WORLD was 382,410 copies, of which number 323,198 copies were circulated in the city of New York, and not upon any territory within the exclusive jurisdiction of the United States, the remaining 59,212 copies being spread throughout the United States; and that the total circulation of THE WORLD on the other dates of publication mentioned in the indictment was about 380,000 copies, of which upwards of 320,000 were circulated

> in the city of New York, but not within Federal territory, the remainder being spread throughout the United States" (p. 88).

It having thus appeared that the articles set forth in the indictment were printed in the defendant's printing office in the City of New York, within the jurisdiction of the State of New York, and that they were circulated in Federal territory in "the regular course of, and as a part of the regular circulation of *The World*," the defendant's counsel moved to quash the indictment on the ground, among others, that the prosecution was unauthorized by any statute of the United States, the Act of 1898 not applying to the case as disclosed by the evidence (*Id.*).

The Court, in adopting this view, expressed the opinion that Congress, in enacting the measures under consideration, had never intended to do more than entrust to the Federal courts the punishment of offenses "either begun and ended, or primarily committed, on Federal territory" (p. 92), and directed the entry of a judgment quashing the indictment, "because, upon the construction of the statute, heretofore stated, the judgment is not authorized by the statute upon which it rests" (p. 93).

By the judgment accordingly entered, the indictment is

> "quashed, set aside and declared to be null and void, because the same is not authorized under any construction of the Act of Congress upon which it is alleged to be predicated, to wit, the Act of Congress of July 7, 1898 . . . or under the construction of any other statute of the United States now in force" (p. 83).

The sole question before this Court is the correctness of this ruling.

United States *v.* Keitel, 211 U. S., 370, 398.

United States *v.* Mescall, 215 U. S., 26, 31.

United States *v.* Stevenson, *Id.*, 190.

ARGUMENT.

FIRST.—Even though the language of the Act of July 7, 1898, were literally broad enough to cover the case at bar, it should not be so construed for the following reasons:

1. Because the general acquiescence of legal minds for nearly a century in the negative of the proposition forbids the construction now, for the first time, asserted by the Government;

2. Because a literal construction would lead to injustice, oppression and absurd consequences;

3. Because the construction contended for by the Government is not only unnecessary to remedy the definite evil aimed at by Congress, but would create another evil which it was the intention of Congress to avoid; and

4. Because the whole history and life of the country is utterly at variance with any such construction.

The Government contends that the burden is on the defendant to show that the case is not within the statute in view of what is termed its "plain language." But such is not the law. The elementary rule is that criminal statutes must be construed strictly in favor of the defendant. Before one can be punished criminally, his case must be plainly and unmistakably within the statute; and, if there be any fair doubt whether the statute embraces it, that doubt is to be resolved in favor of the accused.

United States *v.* Clayton, 2 Dill., 219.
United States *v.* Reese, 5 Dill., 405, 414.
United States *v.* Whittier, 5 Dill., 35.
United States *v.* Sheldon, 2 Wheat., 119.
United States *v.* Wiltberger., 5 Wheat., 76.
United States *v.* Garretson, 42 Fed. Rep., 22, 25.

Keeping this principle in mind, we proceed to discuss the foregoing propositions:

1. The general acquiescence of legal minds for nearly a century in the negative of the proposition now, for the first time, asserted by the Government, forbids the interpretation of the statute in accordance with that proposition.

The first and most impressive argument against the construction which the Government seeks to put upon the statute is the fact that, although it has been a part of the law of the United States for eighty-five years, no one has ever before been heard to claim that the courts of the United States had jurisdiction over newspaper libels simply because of their incidental circulation in these ceded places.

The prosecution is *sui generis*. It is without precedent. Books and records will be searched in vain for such an indictment as this. Although nearly a century has elapsed since the principle embodied in the statute was first adopted, during which period the United States has been served by attorney-generals and district-attorneys of distinguished learning and ability, and during which the great newspapers of this country have circulated through the places ceded to the United States Government by the different States, this is the first time in the history of the administration of American criminal law that the Government has put forth the claim here asserted.

During this period we have passed through the most momentous events of our history. Four wars have been fought, one of them a civil war, in which desperate passions were aroused and the very existence of the nation was at stake; we have lost three presidents by assassination; we have passed through twenty presidential elections; we have survived a number of financial panics; but notwithstanding these and other crises in our national existence and all the fierce discussions of the press which accompanied them, no one has ever claimed till now that

the courts of the United States have jurisdiction to punish a libel first printed, published, and circulated in one of the states, and which, in the course of a general circulation, has happened to penetrate into these federal reservations. This circumstance alone is the strongest possible argument against the prosecution. It has remained for the lawyers of our day and generation to spell out of this statute, although it has existed for nearly a century, authority for a proceeding of this sort.

Such a long period of inactivity indicates the settled judgment of lawmakers and lawgivers and law administrators that no such jurisdiction exists. As was said by Mr. Justice Johnson, in delivering the opinion of the Court in United States *v.* Hudson (7 Cranch, 32), denying the right of the Federal courts to exercise a common law jurisdiction in criminal cases:

> "Although this question is brought up now, for the first time, to be decided by this Court, we consider it as having been long since settled in public opinion. In no other case, for many years, has this jurisdiction been asserted; and the general acquiescence of legal men shows the prevalence of opinion in favor of the negative of the proposition."

2. A literal construction of the statute would lead to injustice, oppression and absurd consequences.

The rule is well established, that a case, even though clearly embraced within the literal meaning of the language employed, will be held not to come within the statute where the latter evidently had a different object, and a literal construction would lead to injustice, oppression or absurdity.

> United States *v.* Kirby, 7 Wall., 482, 486.

In the case cited, the Court was construing a statute which provided:

> "that, if *any person* shall knowingly and wilfully obstruct or retard the passage of the

> mail, or of any driver or carrier, or of any horse or carriage carrying the same, he shall, upon conviction, for every such offense, pay a fine not exceeding one hundred dollars."

This Court held that the act did not embrace the case of a sheriff and his posse, arresting a mail carrier for crime, saying:

> "All laws should receive a sensible construction. General terms should be so limited in their application *as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character.* The reason of the law in such cases should prevail over its letter" (7 Wall., pp. 486–7).

According to the theory of the Government in this case, the publication of a single libel constitutes a separate and independent crime in every place situated in the states, but under the exclusive jurisdiction of the United States, in which such libel circulates. Thus, the publication of a specified article in the West Point Reservation is charged as a crime in one count; and the publication of the same article in the Post Office Building in New York City is charged as a distinct and independent crime in another count. As there are fifteen or more places under Federal jurisdiction in the Southern District of New York, the publication of a single newspaper article might constitute fifteen distinct crimes in that district alone; and as there are certainly over two thousand of such places in the whole country, the publication of a single paper might constitute more than two thousand distinct crimes. All that would be necessary would be that it should circulate widely enough, and that (as is invariably the case) libel should be a crime in each State in which the place under Federal jurisdiction should be situated.

It would thus, upon the contention of the Government, be possible to crush an owner or editor,

under an intolerable burden of crime; and, if this be not injustice, oppression and absurdity, we can conceive of nothing that would answer the description. If to this be added the possibility of removal, according to the asserted right of the Department of Justice, the entire time and fortune of the unhappy publisher might be absorbed in the endeavor to vindicate himself.

Such a construction certainly will not be put upon the Act if it can be avoided, for it contravenes the fundamental principle of criminal jurisprudence that crime is not divisible, and that, when the impulse is single, but one indictment lies, no matter how long the action may continue.

Wharton, Crim. Law (10th ed.), Sec. 27.

> "This notion of rendering crime, like matter, infinitely divisible, is repugnant to the spirit and policy of the law, and ought not to be countenanced."
>
> State *v.* Commissioners, 2 Murphy (N. C.), 371.

> "If in civil cases the law abhors a multiplicity of suits, it is yet more watchful in criminal cases, that the crown shall not oppress the subject, or the government the citizen, by unnecessary prosecutions."
>
> State *v.* Cooper, 13 N. J. L., 361, 375.

The constitutional objection is also grave, for such a law does, in substance, "abridge the liberty of speech and of the press,"—that is, if to "abridge" such liberty means to so curtail it that no owner or editor of a paper could with safety freely discuss public affairs.*

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*The New York law fixes a penalty of one year's imprisonment, or a fine not exceeding five hundred dollars or both. In some of the States a more severe penalty may be imposed, in others a milder; but in quite a number the common law still prevails, so that since many of our great daily journals circulate in probably all of the two thousand or more federal corners, it is easy to imagine the severity of the penalty that might be legally applied in a federal prosecution maintainable under the construction of the statute for which the Government contends.

3. The construction contended for by the Government is not only unnecessary to remedy the definite evil aimed at by Congress, but would create an evil which it was the intention of Congress to avoid.

In United States *v.* Palmer (3 Wheat., 610, 630–2), the statute under construction provided for the punishment of piracy when committed "by any person or persons," or by "any captain or mariner of any ship or vessel." In holding that this applied only to American citizens, or to persons on board of American vessels, this Court, speaking through Chief Justice Marshall, said:

> "The Constitution having conferred on Congress the power of defining and punishing piracy, there can be no doubt of the right of the legislature to enact laws punishing pirates, although they may be foreigners, and have committed no particular offense against the United States. The only question is, has the legislature enacted such a law? Do the words of the Act authorize the Courts of the Union to inflict its penalties on persons who are not citizens of the United States, nor sailing under their flag, nor offending particularly against them? The words of the section are in terms of unlimited extent. The words, 'any person or persons,' are broad enough to comprehend every human being. *But general words must not only be limited to cases within the jurisdiction of the State, but also to those objects to which the legislature intended to apply them.* . . . But it cannot be supposed that the legislature intended to punish a seaman on board a ship sailing under a foreign flag, under the jurisdiction of a foreign government, who should lay violent hands upon his commander, or make a revolt in the ship. . . . Every nation provides for such offenses the punishment its own policy may dictate; and no general words of a statute ought to be construed to embrace them when committed by foreigners against a foreign government."

In Holy Trinity Church *v.* United States (143 U. S., 457), it was held that an act forbidding the importation of aliens "under contract or agreement . . . to perform labor or service *of any kind* in the United States" did not include a contract between an alien and a religious corporation, whereby the former removed to the United States and entered into the service of the latter as its rector. It was said (p. 472):

> "The construction invoked cannot be accepted as correct. It is a case where there was presented a *definite evil*, in view of which the legislature used general terms with the purpose of reaching all phases of that evil, and thereafter, unexpectedly, it is developed that the general language thus employed is broad enough to reach cases and acts which the whole history and life of the country affirm could not have been intentionally legislated against. It is the duty of the courts, under those circumstances, to say that, however broad the language of the statute may be, the act, although within the letter, is not within the intention of the legislature, and therefore cannot be within the statute."

A "guide to the meaning of a statute is found in the evil which it is designed to remedy, and for this the Court properly looks at contemporaneous events, *the situation as it existed, and as it was pressed upon the attention of the legislative body.*"
Id., p. 463.

So considered, it will be plainly apparent that the Act of 1825, upon which the statute of 1898 is modeled, had one general purpose, and only one—*to provide for the punishment of acts which could not be punished by the States, and which, if not prosecuted by the Federal Government, would go wholly unpunished.*

The first Federal Crimes Act was passed at the second session of the First Congress, and was approved by President Washington on April 30, 1790.

It was soon discovered to be defective. Many crimes escaped punishment because committed in places within the Union, but excepted from State jurisdiction, and because the Federal Act failed to provide for the offenses in question. Statutes were enacted from time to time to supply these deficiencies; and the view was also advanced that the Federal courts were authorized to exercise a common law jurisdiction in criminal cases. But this contention, as we have seen, was disposed of by this Court in United States *v.* Hudson, decided in 1812. Mr. Justice Story was a member of the court and participated in the decision. He was quick to perceive its results and the necessity for legislation by Congress to cover offenses in places where the State had parted with its jurisdiction. Accordingly in 1813 he prepared and sent Attorney-General Pinkney "some sketches of improvements in the criminal code of the United States."

> "It is grossly and barbarously defective," he wrote about this time. "The courts are crippled, offenders, conspirators and traitors are enabled to carry on their purposes almost without check."
>
> Life of Joseph Story, Boston, 1851, Vol. 1, p. 244.

"What think you," he queried in a letter shortly afterwards, "of a government where public crimes on the seas are, with very few exceptions, left wholly unpunished, and *crimes on the land are suffered to remain without the least criminal action?*" (*Id.*, p. 247).

Notwithstanding the necessity pointed out by Mr. Justice Story of Federal legislation to cure this crying evil, ten years elapsed before the matter was taken up by Congress. The delay is, however, easily accounted for by the fact that the country at that time was passing through a reaction from the

period of "ardent nationalism," which culminated in 1812; and leaders in Congress were too jealous of the new and unexpected powers which the National Government had been found to possess to pass a law conferring upon it even adequate jurisdiction in criminal cases.*

On February 10, 1823, James Buchanan, then a member of the Judiciary Committee of the House of Representatives (Webster being its Chairman), submitted a resolution that the committee be instructed "to inquire whether there be any, and if any, what crimes not now punishable by law, to which punishments ought to be affixed."

In offering this resolution, Buchanan referred to the decision in the Hudson case, and said:

> "Congress have annexed punishments but to a very few crimes, and those all of a very aggravated nature. The consequence is, that a great variety of actions, to which a high degree of moral guilt is attached, and which are punished as crimes at the common law, and by every State in the Union, may be committed *with impunity* on the high seas and in any place where Congress has exclusive jurisdiction. To afford an example; An assault and battery, with intent to commit murder, may be perpetrated, either on the high seas or in a fort, magazine or dockyard belonging to the United States, and there exists *no law to punish such an offense*. This is a palpable defect in our system which requires a remedy; and it is astonishing that none has ever yet been supplied."

He added that he did not expect that any bill could be matured and passed into a law at that session. If, however, the Judiciary Committee would take the subject into consideration, and report upon it to the House before it rose, it would

*See The American Nation, Hart, 1819-1829, "Reaction toward State Sovereignty," p. 299.

call public attention to it, and insure the passage of a bill at an early period of the next Congress. The resolution was then adopted.

Annals of Congress, 17 Cong., 2 Sess., 1822–1823, 929.

Mr. Justice Story had meanwhile drawn a bill dealing with the subject, the eleventh section of which became the basis of Section 3 of the Act of 1825. "This," he said, in a carefully prepared argument, in which the bill was taken up clause by clause, and its provisions and purposes explained,

> "is the most important section of the whole bill. The criminal code of the United States is singularly defective and inefficient. . . . Few, very few, of the practical crimes (if I may so say) are now punishable by statutes, and if the courts have no general common law jurisdiction (which is a vexed question), they are *wholly dispunishable*. The state courts have no jurisdiction of crimes committed on the high seas or in places ceded to the United States. *Rapes, arsons, batteries and a host of other crimes may in these places be now committed with impunity.* Suppose a conspiracy to commit treason in any of these places, by civil persons, how can the crime be punished? *These are cases where the United States have an exclusive local jurisdiction.* And can it be less fit that the Government should have power to protect itself in all other places where it exercises a legitimate authority. That Congress has power to provide for all crimes against the United States is incontestible."
>
> Life of Joseph Story, Boston, 1851, Vol. I, p. 293.

> "The printed bill was originally prepared by myself and submitted to my brethren of the Supreme Court. It received a revision from several of them, particularly Judges Marshall and Washington, and was wholly approved by them, and indeed, except as to a single section, by all the other Judges. Judge Johnson expressed some doubt as to the elev-

> enth section; but, as I understood him, rather as to its expediency than the competency of Congress to enact it. I think that I am at liberty to say that it will be satisfactory to the Court if it is passed."
>
> *Id.*, p. 297.

With Mr. Justice Story's proposed measure before him Webster drew a bill, which the committee reported, and which, with modifications, passed both Houses at the next session of Congress. The debates on the bill show very clearly the intention not alone to deal exclusively with cases which would otherwise go entirely unpunished, but also to avoid a conflict of jurisdiction between the States and the Federal Government. The general purpose of the act was stated by Buchanan to be, the desire to correct a defective system of laws in which "no provision had ever been made for the punishment of the crimes which it embraced when committed in places within the *exclusive* jurisdiction of the United States" * (Register of Debates in Congress, Gales & Seaton, 1824-1825, Vol. I, pp. 157-8).

But a determined purpose to avoid any question of conflicting jurisdiction appears throughout the debates. The fourth section, as drafted and presented to Congress, provided for the punishment of certain crimes when committed

> "upon the sea, or in any arm of the sea, or in any river, haven, creek, basin, or bay, within the admiralty and maritime jurisdiction of the United States" (*Id.*, p. 152).

* It is to be noted that there has never been any danger of these particular ceded places becoming "havens of refuge" for offenders against the laws of the State, for the various legislative cessions have expressly reserved to the State the right to execute its civil and criminal process therein (Laws of New York, 1857, Ch. 762; 1875, Ch. 359; 1876, Ch. 410; 1888, Ch. 300), so that no publisher of a libel printed within the territorial jurisdiction of the State and afterwards disseminated in the New York post office building or at West Point could ever escape prosecution by hiding himself in either of those places.

Mr. Wickliffe, of Kentucky, moved to amend the section by inserting the provision, "and not within the jurisdiction of any State or Territorial Government" (*Id.*, p. 154).

> "He explained and supported the amendment, as intended to prevent collisions between the authority of the General and State Governments. . . . He conceived the State Governments to be entirely competent to inquire into and punish crimes committed within their own jurisdictions, and that, as there was no necessity, *there would be no advantage, in giving the United States concurrent power to do the same*" (*Id.*, p. 154).

Webster replied that:

> "He had already stated to the committee *that one of the principal objects in framing this bill had been to avoid a conflict of territorial jurisdictions between the United States and the several states.* . . . The class of crimes provided for in this section not only might happen, but had actually occurred, *without the existence of any law to punish them*" (*Id.*, p. 154).

He opposed the amendment, however, and it was at first lost (*Id.*, p. 157).

On a subsequent day the discussion was resumed. Mr. Barbour, who subsequently became a member of this Court, stated that

> "he highly approved of much that the bill contained, and thought that many of the offences it contemplated were worthy of punishment; but the object he wished to obtain in the modification he now suggested, was, that the federal courts should have cognizance of all cases where punishment was necessary, *and where the State courts have no jurisdiction; but that where the State courts have jurisdiction, there none should be given to the United States. . . . His wish was to avoid all colliding jurisdictions*" (*Id.*, pp. 165–6).

Webster then argued at length against the change, urging, in substance, that crimes committed in any part of the admiralty and maritime jurisdiction of the United States had close relation to commerce; that the United States had power to punish them; and that the matter ought not to be left solely to the States, which, on account of the expense, might not punish such crimes, even though they had jurisdiction to do so (*Id.*, pp. 166–7). Mr. Barbour again argued in favor of the amendment, and the matter went over (*Id.*, p. 168).

On a later day, Mr. Wickliffe moved to recommit the bill to the Judiciary Committee with instructions to amend it, among other things, "by altering the other sections in such a manner as to confine the operation of the bill to places without the jurisdiction of any particular State" (*Id.*, p. 335). He again argued at length in support of the amendment (*Id.*, pp. 335–6). In reply Webster expressed his intention, "in reluctant acquiescence with the wishes of a highly respected member of the Judiciary Committee," "to modify the bill in the manner the gentleman desired" (*Id.*, p. 338); and the statute, as it passed, provides for the punishment of the specified crimes only when committed "within the admiralty and maritime jurisdiction of the United States, *and out of the jurisdiction of any particular state*" (4 Stats. at Large, p. 115; Act of March 3, 1825, Sec. 4).

It is thus apparent that the principle that there should not be created a concurrent jurisdiction in the State and Federal Governments to punish crime was vigorously asserted in the debates on the bill, and found expression in it against, in one particular, the powerful opposition of Webster.

Although Webster, for special reasons, opposed the amendment to Section 4, he was, as already seen, fully in accord with the general desire "to avoid a *conflict of territorial jurisdictions* between the United States and the several States." This he declared to be "one of the principal objects in framing this bill";

and this purpose plainly led to the use of the language employed in Section 3, upon which the Act of 1898 was modeled. The "offense committed" obviously contemplated a crime perpetrated entirely outside the jurisdiction of the State, and in no way punishable by it. Webster thus explained the purpose of the section:

> "As to the third section, it must be obvious that, where the jurisdiction of a small place, containing only a few hundreds of people (a navy yard, for instance), was ceded to the United States, some provision was required for the punishment of offenses; and as, from the use to which the place was to be put, some crimes were likely to be more frequently committed than others, the committee had thought it sufficient to provide for these, and then to leave the residue to be punished by the laws of the State in which the yard, &c., might be. He was persuaded that the people would not view it as any hardship that the great class of minor offenses should continue to be punished *in the same manner* as they had been before the cession" (*Id.*, 338).

Speaking of the act as a whole, Edward Everett, who was himself in Congress from 1825 to 1835, and succeeded Webster as Secretary of State, says:

> "As it finally passed, in twenty-six sections, *it covered all the cases which had occurred in the thirty-five years which had elapsed since the law of 1790 was enacted;* and it amounted to a brief, but comprehensive code of the criminal jurisprudence of the United States, as distinct from that of the separate states. It was Mr. Webster's object in this statute, not to enact theoretical reforms, but to remedy practical evils; to make provision *for crimes, which, for want of jurisdiction, had hitherto gone unpunished.* It was the effect of Mr. Webster's act, *not to create new offenses*, but to bring within the reach of a proper tribunal crimes recognized as such by all the codes of

law, *but which had hitherto escaped with impunity between separate jurisdictions.*"
Biographical Memoir; Webster's Works.
Boston, 1853, Vol. I, p. *lxxxix.*

Considering the Act of 1825, then, in the light of "contemporaneous events," of "the situation as it existed, and as it was pressed upon the attention of the legislative body" (Holy Trinity Church *v.* United States, *supra*), it is clear, not only that the evil sought to be remedied was *the existing inability to punish crimes committed wholly in Federal territory, and of which the States could not take cognizance*, but that Congress was equally desirous of *avoiding any conflict with the jurisdiction of the States* over offenses punishable by their own laws. Where the State could take cognizance of an offence, in any of its aspects, no jurisdiction was to be exercised by the Federal tribunals.

If the Government's contention be sound, the publisher of an alleged libel originally uttered in State territory, but incidentally spreading into one of these ceded places, might, after a trial and acquittal or conviction in a State court, be subsequently prosecuted for the same libel in a Federal tribunal because of the technical republication of the libel on the national soil. Would the acquittal or conviction in the State court be a bar to the Federal prosecution? Our adversaries say "no," because an act of publication, operating in two distinct jurisdictions, constitutes two crimes, one of which will go wholly unpunished unless by means of a Federal prosecution.

To illustrate: The District Court for the District of Indiana has held it to be more than doubtful whether articles of the same substantial import as those set forth in this indictment are even libelous (United States *v.* Smith, 173 Fed. Rep., 227–8), whereas our adversaries characterize them as libelous beyond dispute. A State court might

follow the view of Judge Anderson, and a Federal court adopt that of the Department of Justice, or *vice versa*.

But this is not all. If the statute authorizes the Federal courts to take cognizance of newspaper libels originating outside of Federal territory, and only penetrating therein in the course of their general circulation, the National government may with as good reason take upon itself the prosecution of many other crimes against the laws of the states, whenever any part of the transaction has taken place in Federal territory. Thus of a conspiracy to violate the State laws, if some act toward its consummation were committed at West Point; or of a nuisance, actually maintained outside of a Federal reservation, but obnoxious to its residents. So of all crimes not wholly, but only partially, committed in the National territory.

These considerations merely suggest the difficulties of the theory of *concurrent* jurisdiction. They become vastly important when we remember the scrupulous concern of the framers of the assimilative statute to avoid the "collisions" which must result from concurrent jurisdiction over offenses of this character, and hence their purpose of avoiding that very serious evil.

Let us suppose that in the Congress of 1825 some member had offered a bill giving the Federal Government the right, in terms, to take cognizance of newpaper libels incidentally circulating in Federal territory, or of any other crime punishable under state laws, provided only that some portion of the crime, however trivial, took place on Federal soil. Can it be believed that such a measure would not have been received with an outburst of indignant protest from every member of the House? Yet it is seriously contended that the Act of 1825 accomplished precisely this result.

4. The whole history and life of the country condemn the construction asserted by the Government.

If the interpretation of the Act contended for by the Government be adopted, its necessary result will be to confer upon the national authority a general control over the press of the country. There are in the United States over two thousand federal places, scattered all over the Union. They are to be found in large numbers in every State, and necessarily in every judicial district. It is a matter of common knowledge that in almost all of them the newspapers which are printed in all of the states circulate to a greater or less extent. In order to bring these acts within the jurisdiction of the federal courts all that the Department of Justice need do is to find some copies of the offending journal circulating in one or more of these places, and then proceed with a prosecution of the publisher on the theory that the courts of the United States have jurisdiction because of the incidental publication of the libel in its territory. The prosecution might, it is true, take the form of an indictment for libel of an individual; but the theory, once established, would put it in the power of the Federal Government to use the courts of the United States to prosecute any publisher who had attacked the government, or the character of government officials, by criticizing their public acts. In a word, it would give the Federal Government complete control of the press of the United States.

If this theory can be maintained we shall revive in our day and generation the Sedition Act of 1798, which for over a century has been condemned not only as unconstitutional, but as contrary to the genius of our free institutions; for if there is one thing in this country which is settled by the verdict of history it is that the power to control the press shall not be entrusted to the national government, but shall be left to the tribunals of the several states.

Is it possible to suppose that the Congress of 1825 intended to pass an act which would enable federal courts to exercise the forbidden power?

The answer is to be found in the history and fate of the one memorable attempt of the Federal government to assume that very jurisdiction, an attempt which, in 1825, was still fresh in the memory of public men. In 1798, and for several years previous, the country was in a very critical state. England and France were at war. France was making every effort to embroil us in the struggle, and its pretensions were ardently supported by the Republican party of the day. The country swarmed with French political agents and sympathizers, and attacks upon the Government for remaining neutral were many and bitter. The temptation to punish these attacks was peculiarly strong;* and the Federalists yielded to it. On July 14th, 1798, was passed the notorious Sedition Act (1 Stat., 596), Section 2 of which made it punishable, under heavy fine and imprisonment, to print or publish any false, scandalous and malicious writings against the government of the United States, or either House of the Congress, or the President, with intent to defame them, or to bring them into contempt or disrepute, or to excite against them the hatred of the good people of the United States, or *to stir up sedition*, or with intent to excite any unlawful combination for opposing or resisting any law of the United States, or any lawful act of the President, or to excite generally to oppose or resist any hostile designs of any foreign nation against the United States.

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* "For passing the act there was unquestionably great provocation. No man who has not waded through the political literature of the closing years of the last (eighteenth) century, can form any conception of the depths of falsehood, of knavery, of calumny, of shameful abuse to which it is possible for writers of pamphlets and editors of newspapers to descend." (McMaster's History of the People of the United States, Vol. II., p. 397.)

Although this measure was directed against the French and French sympathizers, and although the conduct of the French nation at this time was so insolent and offensive that in the previous year President Adams, in a special message to Congress, had recommended preparations for war, yet the Act was so unpopular that it was by far the most potent of the factors which led to the speedy downfall of the Federalists and the election of Jefferson.*

The prosecutions under the Act were very unpopular. The impeachment proceedings against Justice Chase were based in part upon his conduct in one of them. Jefferson and Madison at once took the position that the Act was unconstitutional, and embodied these views in the famous Kentucky and Virginia Resolutions.†

* That this Act did more than anything else to turn the Federalists out of power, is the unanimous verdict of history. It "sealed the fate of the Federal party." (Von Holst, Constitutional and Political History of the United States, Vol. I, p. 142.) "They (the Democrats) had seen no vision of national duty, no workable creed, until the Alien and Sedition laws were passed and the Sedition law enforced against editor and pamphleteer. Then they had had sight at last of the constitutional principles and the domestic policy for which they must fight. Mr Jefferson and Mr. Madison had cleared their thought with the strong sentences of the Kentucky and Virginia Resolutions,—no programme, but a warning cry which no man failed to hear or to understand; and the election of 1800 disclosed, behind Mr. Jefferson, no longer a body of agitators merely, but a national party, ready to play the sober role of administering a government." (Wilson, History of the American People, Vol. III, pp. 167–8.) "Had the Federalist Congressmen assembled in caucus and debated by what means they could make themselves more hated than they had ever been before, by what means they could destroy their present power, by what means they could turn thousands of 'black cockaders' into bitter and inveterate foes, they could not, by any possibility, have found a means so efficient as the law against libelous and seditious writing." (McMaster, History of the People of the United States, Vol. II, p. 397.)

† Curtis, Constitutional History of the United States, Vol. II, p. 3.

The criticism of the act, and the widespread conviction that it was unconstitutional, were not based on any particular stringency in its provisions, but upon the belief that Congress had no power to legislate upon the subject of libel, that being a matter peculiarly within the cognizance of the states. The Kentucky resolutions asserted that, "Libels, falsehoods and defamation, equally with heresy and false religion, are withheld from the cognizance of Federal tribunals." *

Jefferson, in a letter to Madison on June 7, 1798, said that the Alien Bill and the Sedition Bill

> "both are so palpably in the teeth of the Constitution as to shew they (the Federalists) mean to pay no respect to it."
>
> Jefferson's Writings, Putnam Ed., Vol. VII, p. 267.

In a letter to Stevens Thomson Mason, then a member of the Senate, on October 11, 1798, he said:

> "For my own part, I consider those laws as merely an experiment on the American mind, to see how far it will bear an avowed violation of the Constitution" (*Id.*, p. 283).

The Act was even opposed by Marshall and Hamilton, probably the two ablest constitutional lawyers in the ranks of the Federalist party.†

On Jefferson's accession to the Presidency, he at once pardoned and released every person convicted of a violation of the Act.‡

In a letter to Mrs. Adams on July 22, 1804, in answer to a complaint from her for releasing Callender, convicted of libeling her husband, Jefferson says:

> "I do not know who was the particular wretch alluded to, but I discharged every

* Jefferson's Writings, Putnam Ed., Vol. VII, p. 295.

† Von Holst's Constitutional History of the United States, Vol. I, pp. 142-8; The Federalist System, Basset (Hart's American Nation Series), 1789-1801, p. 260.

‡ Wilson, History of the American People, Vol. III, p. 174.

person under punishment or prosecution under the sedition law because I considered, & now consider, that law to be a nullity."

Jefferson's Writings, Putnam Ed., Vol. VIII, p. 309, n.

On September 11, 1804, he again wrote to Mrs. Adams:

"*While we deny that Congress have a right to control the freedom of the press, we have ever asserted the right of the States, and their exclusive right, to do so.* They have accordingly, all of them, made provisions for punishing slander, which those who have time and inclination, resort to for the vindication of their characters. In general, the State laws appear to have made the presses responsible for slander as far as is consistent with its useful freedom. In those States where they do not admit even the truth of allegations to protect the printer, they have gone too far."

Id, p. 311.

In 1830 occurred the trial of Judge Peck before the Senate of the United States. Two of the managers on the part of the House of Representatives were James Buchanan and Mr. McDuffie of South Carolina. Both of them were members of the House in 1825, and Buchanan, as we have seen, was one of the members fo the Judiciary Committee which reported the Crimes Act of that year.

In his argument on the trial of Judge Peck in 1830, Buchanan, although he had been a warm supporter of the Act of 1825, after referring to the constitutional prohibition against the making of any law abridging the liberty of speech or of the press, said:

"What was the intention of this provision? The framers of the constitution well knew that *under the laws of each of the states composing this union libels were punishable.* They therefore left the character of the

> officers created under the constitution and laws of the United States to be protected by *the laws of the several states.* They were afraid to give this government any authority over the subject of libels; *lest its colossal power might be wielded against the liberty of the press.* They have guarded it with a wholesome and commendable jealousy. . . . The popular odium which attended this law was not excited by its particular provisions, *but by the fact that any law upon the subject was a violation of the constitution.* Congress had no power to pass any law of the kind, good or bad. It is now, I believe, freely admitted by every person (I at least have not for several years conversed with any man who held a contrary opinion) that Congress, in passing this Act, had transcended their powers. I have no doubt that the motives of many of those who passed it were perfectly pure; but yet if any principle has been established beyond a doubt by the almost unanimous opinion of the people of the United States it is that the sedition law was unconstitutional. Such is the strong and universal feeling upon this subject that if any attempt were now made to revive it the authors would probably meet a similar fate with those deluded and desperate men in another country who have themselves fallen victims upon the same altar on which they had determined to sacrifice the liberty of the press "* (Trial of Judge Peck, Stansbury's Ed., p. 447).

In the same case Mr. McDuffie said:

> "In pronouncing sentence of condemnation upon this Sedition Law, the people of the United States have solemly decided that the Federal legislature has no power to protect

*The reference is to the prosecutions instituted by Sir James Scarlett, Attorney-General, against the proprietors and printers of the *Morning Journal* for libels on the King, the House of Commons and the Duke of Wellington, proceedings which "were received with universal dislike by all parties in the country" (Shortt on Informations, p. 9, n. v.).

> the public functionaries from *even the most abusive and licentious exercise of the freedom of the press, holding that the State legislatures and State tribunals are more safe depositories of that power;* and such is the plain language of the constitution."*

In 1833, Buchanan, t[illegible] Minister to Russia, told Count Nesselrode that:

> "The press was essentially free in our country. Even the Congress of the United States had no power to pass any law for the punishment of a libel on the President. This subject was *entirely within the jurisdiction of the several States.*"†

In 1836, in consequence of a recommendation contained in a message from President Jackson, a select committee of the Senate returned a bill prohibiting the transmission through the mails of inflammatory publications tending to incite popular discontent, and giving the President power to decide as to the character of the publications sought to be transmitted. In a speech in opposition to the measure, Calhoun asserted that

> "It would place in the hands of the general government an instrument *more potent to control the freedom of the press than the Sedition Law itself.*"

The bill was defeated.

Works of Calhoun, Vol. II, p. 514.

On July 4, 1840, President Van Buren approved an act directing the Secretary of the Treasury to pay to the legal representatives of Matthew Lyon, the fine which had been imposed on Lyon in 1799 under the Sedition Act, with interest in full.

6 Stat., 802.

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* Trial of Judge Peck, Stansbury's Ed., p. 90.

† Buchanan's Works, Moore, Vol. II, p. 325.

In reporting the bill to the House, the Committee on the Judiciary adopted a report of the same committee made in 1830, which reads as follows:

> "The committee are of opinion that the law above recited was unconstitutional, null and void, passed under a mistaken exercise of undelegated power, and that the mistake ought to be corrected by returning the fine so obtained, with interest thereon, to the legal representatives of Matthew Lyon. The committee do not deem it necessary to discuss at length the character of that law, or to assign all the reasons, however demonstrative, that have induced the conviction of its unconstitutionality. No question connected with the liberty of the press ever excited a more universal and intense interest—ever received so acute, able, long continued and elaborate investigation—was ever more generally understood, or so *conclusively settled by the concurring opinions of all parties*. All that now remains to be done by the representatives of the people who condemned this act of their agents as unauthorized, and transcending their grant of power, to place beyond question, doubt or cavil that mandate of the constitution prohibiting Congress from abridging the liberty of the press, and to discharge an honest, just, moral and honorable obligation, is to refund from the Treasury the fine thus illegally and wrongfully obtained from one of their citizens, for which purpose the committee herewith report a Bill."
>
> Cong. Globe, 1st Sess., 26th Cong., p. 411; House Doc. No. 86.

The bill passed the House by a vote of 124 to 15. *Id.*, p. 414.

> "Thus," says Wharton, "just forty years after the passage of the Sedition Law was its last vestige effaced, and its doctrines formally disowned."
>
> U. S. State Trials, p. 344, *note*.

In 1844, and again in 1850, Congress passed similar acts, respectively approved by Presidents Tyler and Fillmore, directing the repayment of the fines which had been imposed on Anthony Haswell, in 1800, and on Thomas Cooper, in 1798, under the Sedition Act.

9 Stat., 151; *Id.*, 799.

In 1881, David Dudley Field, speaking of the Sedition Act, said:

> "If this were within the competency of Congress, the punishment of libel upon any officer of the United States would be equally within its competency. Indeed it is not easy to perceive why Congress might not take upon itself all remedies, criminal and civil, for any wrong done to the good name, person or property of any federal officer, and send the parties before the federal courts for trial. Can there be a doubt that such an assumption of power was never dreamed of by those who framed or those who ratified the federal constitution?"
>
> *North American Review*, May, 1881.

In *Ex parte* McLeod, 120 Fed. Rep., 130, 136, decided in 1903, the court said:

> "Profound distrust of the ability of the people to govern themselves, alone, made it possible to enact the alien and sedition laws, which expired by their own limitations, and were ever afterwards condemned by the aggressive power of a dominant public opinion, which proclaimed as a maxim of government that greater danger to liberty and free institutions lurked in any power to curb the right of free speech and liberty of the press, than from any abuses which might result from leaving them untrammeled. *This public opinion, which has been acquiesced in by all departments of the government and gone unchallenged for a century past, has pronounced a construction of the constitution in this respect which has silently incorporated itself into that instrument.*"

In view of this chapter of our history the special Message to Congress of the President of the United States of December 15th, 1908, makes curious reading. Speaking of the newspaper stories, then recently in circulation, with respect of the transactions alluded to in this indictment, he said:

> "I do not believe we should concern ourselves with the particular individuals who wrote the lying and libellous editorials, articles from correspondents, or articles in the news columns. The real offender is Mr. Joseph Pulitzer, editor and proprietor of *The World*. While the criminal offense of which Mr. Pulitzer has been guilty is in form a libel upon individuals, the great injury done is in blackening the good name of the American people. It should not be left to a private citizen to sue Mr. Pulitzer for libel. He should be prosecuted for libel by the Governmental authorities. In point of encouragement of iniquity, in point of infamy, of wrongdoing, there is nothing to choose between a public servant who betrays his trust, a public servant who is guilty of blackmail, or theft, or financial dishonesty of any kind, and a man guilty as Mr. Joseph Pulitzer has been guilty in this instance. It is therefore a high national duty to bring to justice this vilifier of the American people, this man who wantonly and wickedly and without one shadow of justification seeks to blacken the character of reputable private citizens and to convict the government of his own country in the eyes of the civilized world of wrongdoing of the basest and foulest kind, when he has not one shadow of justification of any sort or description for the charge he has made. The Attorney-General has under consideration *the form* in which the proceedings against Mr. Pulitzer shall be brought."

Here we have reincarnated the very spirit of the Sedition Law—the theory that strictures upon the conduct of public officials are not to be treated as

mere libels upon individuals, but constitute a sort of treason, against which all the "colossal power" of the Federal government should be wielded.

In the performance of their "high national duty" the Government authorities sought "to bring to justice this vilifier of the American people" who had sought "to convict the government of his own country in the eyes of the civilized world of wrong-doing of the basest and foulest kind" through the instrumentality of this indictment, charging, not a libel on the Government, but merely the defamation of certain individuals. But this is merely the *form* of the prosecution. It is in substance and in fact an indictment for the publication of what in 1798 would have been alleged, in terms, to constitute a seditious libel, tending to stir up discontent and disaffection, and to bring the Government into contempt. Indeed, this is expressly charged, namely, that it was the defendant's purpose "*to stir up disorder among the people.*" The language of the Sedition Act was "to stir up sedition."

SECOND.—The offense charged in the indictment is not even within the letter of the statute.

So far the endeavor has been to ascertain the legislative intent, upon the assumption—as the Government contends—that the language of the act, literally construed, is broad enough to embrace the case at bar. It remains to consider whether the present case is even within its letter.

The Act of July 7, 1898, punishes—as, in fact, it could punish—only an "offense committed" in Federal territory. What is such an "offense," so "committed?"

(*a*) The criminal law of the State in which the Federal territory is situated is made the basis of criminality under the Act of Congress,—the test whether or not a given act is of a character sought to be punished by the latter. This is obvious from the language employed. An "offense committed" in Federal territory can receive only "the same punishment" as "the like offense" when committed within the jurisdiction of the State. No greater power to punish is given by the Act of Congress than under the laws of the State; and since crime and punishment go hand in hand,—since what is not punishable is not a crime,—it necessarily follows that the State law is the test of criminality. What is not criminal when done within the jurisdiction of the State is not criminal when done within the jurisdiction of the Federal Government.

(*b*) It is equally clear that the act or acts done within Federal jurisdiction must be such that they would, *in and of themselves*, if done within the jurisdiction of the State, constitute a crime against the laws of the State. There must be an "offense committed" within the Federal territory. This imports, of course, a *completely consummated* breach of the criminal law. If it were not that, to punish it would be to punish what was not a crime. And, since Congress has the power, and in this act attempts, to punish only acts done within the jurisdiction of the Federal Government,—an "offense committed" therein,—the acts done *within that jurisdiction* must be a complete crime.

(*c*) From these two principles it is plain that, where a certain act, amounting to the "offense" specified, is done in Federal territory, and a separate and distinct act, of like character, within the jurisdiction of the State, two distinct crimes have been committed,—one against the Federal law, the other against the State law. And it inevitably fol-

lows that, if, in such a case, the Federal territory had been land within the jurisdiction of the State, there would have been two distinct crimes against the State, conviction for one of which would not have been a bar to prosecution for the other.

In the case at bar we have, according to the theory of the present indictment, precisely such a situation, namely, the publication of the alleged libel both within and without a place ceded to the Federal Government,—the publication in such place being an act punishable by the Federal Government, but the publication elsewhere being an act of which it had no jurisdiction whatsoever. The crucial question thus is: *Assuming that the entire territory through which the articles were circulated had been within the jurisdiction of the State of New York, would several crimes have been committed against the State, the publication in each of the places ceded to the Government constituting, in and of itself, a distinct crime?* We have already considered the extraordinary nature of such a contention. It is based upon the theory *that the act of publication will be subdivided* in order to make many crimes out of a single libel. As we have already pointed out this theory of the Government would certainly make, out of a single publication of a newspaper article, as many distinct crimes as there are places within the jurisdiction of the Federal Government in which the article circulates; and, carried to its logical conclusion, would appear to make a distinct crime out of each sale of the paper.

We are not now concerned with the question whether this startling result *might* be made to follow from the facts of the case under consideration—whether this appalling burden of crime *might* be constitutionally evolved out of the publication of a newspaper article. The question is whether the criminal statute under construction takes such a hard, such a wellnigh intolerable, view of the case;

and the test in the case at bar is to be found in a consideration of the nature of

THE NEW YORK LAW OF CRIMINAL LIBEL.

The Government might have considerable difficulty in establishing that the common law, as administered in either England or this country, ever made many crimes out of the publication of a single newspaper article, in the ordinary course of business, upon the theory that any particular sale or series of sales constituted a distinct offense. The solution of the case at bar, however, does not require any sifting of the common law, for when the Act of Congress of July 7, 1898, took effect, the criminal law of New York, both substantive and procedural, had been codified for seventeen years (New York Penal Code, Laws of 1881, Chap. 676; New York Code of Criminal Procedure, Laws of 1881, Chap. 442). These statutes embody the law in force in New York on July 7, 1898, which was incorporated into the Act of Congress taking effect on that date by the provision that acts done in Federal territory shall receive the same punishment as the State laws "*now* provide for the like offense."*

Franklin *v.* United States, 216 U. S., 559, 568–9.

Section 243 of the Penal Code provides:

> "A person who *publishes* a libel is guilty of a misdemeanor."

It is the *publication* of the libel which is here made a crime, not the publication in this or that place, or to this or that person. *The act is treated*

* The provisions hereafter referred to from the Penal Code, in force in 1898, are carried into the later Penal Law of New York without substantial change. (Consolidated Laws, Chap. 40, Secs. 1341, 1343, 1346, 1347, 1348.) The Code of Criminal Procedure has not been recodified.

as one and indivisible. If there could be any doubt on this head, it is completely resolved by other provisions. Sec. 245 of the same Code provides:

> "To sustain a charge of publishing a libel, it is not necessary that the matter complained of should have been seen by another. It is enough that the defendant knowingly displayed it, or parted with its immediate custody, under circumstances which exposed it to be seen or understood by another person than himself."

As it is the *publication* of the libel which is made criminal, the crime is necessarily complete when once the libel is displayed, or its custody parted with, under the circumstances specified.

Sections 249 and 250 provide that, where a person libeled is a resident of the State, the prosecution shall be either in the county of such residence, or the county where the paper is published; and that, where the person libeled is a non-resident, the prosecution shall be in the county in which the paper, on its face, purports to be published, or, if it does not so indicate, in any county in which it was circulated. Finally, Section 251 provides:

> "*A person cannot be indicted or tried for the publication of the same libel, against the same person, in more than one county.*"*

Section 138 of the Code of Criminal Procedure contains similar provisions as to the place for the prosecution of a libel, and the immunity from liability to prosecution in more than one county. It also contains the following provisions:

> "When an act charged as a crime is within the jurisdiction of another State, territory or country, as well as within the jurisdiction of this State, a conviction or acquittal thereof in the former, is a bar to a prosecution or indictment therefor in this State" (Sec. 139).

* The provisions of Sections 249, 250 and 251 were taken from a much earlier statute (Laws of 1852, Ch. 165).

> "When a crime is within the jurisdiction of two or more counties of this State, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment thereof in another" (Sec. 140).

These provisions define, with unmistakable clearness and precision, the policy of the State of New York in respect of a libel composed, printed and published within the jurisdiction of the State. What is made criminal is the *publication* of a libel; and the publication of a single libel can be punished but once. Since the commission of this act of publication is not confined to one spot, the crime is, in its nature, capable of punishment in more than one place; and this principle finds recognition in the various provisions determining the county in which the prosecution shall be had. It is, none the less, a *single* crime, punishable but once; and where it has been once punished, whether in the State of New York, or in some other State, territory or country, it cannot be again punished in the former. Here is the completest refutation of the theory of the divisibility of the publication and the multifariousness of the crime, upon which the whole prosecution rests. Granting that Congress *might* constitutionally provide a separate punishment for the distinct act of circulating libelous matter in Federal territory, it has not done so. *It adopts the New York law;* and that law provides, in the case of each article, one punishment for the entire series of acts connoted by the term "publication," and makes that punishment exclusive of any other. It also fixes a place where the punishment shall be inflicted, namely, the county in which the libel is published, or the county where the libeled person resides; or, under special circumstances, any other county in which the paper was circulated. It will not be denied that the reference is to that part of the territorial limits of a county which is within the jurisdiction of the State; that the punishment referred to is one to be inflicted by

the proper State officials. It is thus clear that what is punished under the State law is the *entire* publication; and that it is punished at a place and in a manner necessarily exclusive of the Federal authorities.

That the acts here in question are not criminal becomes plain upon consideration of a concrete case. On October 3, 1908, for instance, the defendant published about three hundred and eighty thousand copies of an alleged libel in the State of New York and elsewhere. Of this entire issue of the paper thirty copies found their way into Federal territory within the Southern District of New York. Conceding the power of Congress to punish the publication of these thirty copies, we find that it regards the act as criminal only in so far as the State of New York regards it as criminal. *The effect of the adoption by Congress of the State law is that, for the purposes of this case, the State statutes are in force throughout the entire territorial limits of the State.* But if, in fact, the State law of criminal libel had been in force throughout the whole of New York and Orange Counties, it is perfectly evident that it would not have made either one crime, or two, out of the publication of these thirty copies. It would not have punished the particular acts in question at all, except as they constituted a part or incident of the entire publication of the paper on the day in question. In punishing the whole it may be said to punish the parts; but it attempts to punish the parts only by and through punishment of the whole. Concededly, however, the Federal Government has no power to punish the whole offense, and is not attempting to do so. In proceeding to punish the parts as com plete and as independent crimes, it is attempting to construct a crime out of what is, under the State law, insufficient for that purpose. If the Act of Congress permits this, then it necessarily makes criminal what the State law does not make criminal, in spite of the expressed intention to the contrary.

If the acts in the case at bar constitute a crime under the Federal statute, a strange result follows. As has been seen, the law of New York treats the publication of a libel as an indivisible act, constituting a single crime; and a conviction or acquittal of this crime "within the jurisdiction of another State, territory or country" is a bar to a prosecution therefor in New York (N. Y. Code Criminal Proc., Sec. 139). This language does not embrace a prosecution in a place ceded to the Federal Government and under its exclusive jurisdiction. So that although a conviction or acquittal in any other State or territory of this country, or in any foreign country, would prevent a prosecution in New York, a prosecution, or any number of prosecutions, in places within the jurisdiction of the Federal Government would still leave the accused open to another indictment in New York. In the former case the New York theory of the indivisibility of the crime is vindicated. In the latter case it is set aside. Plainly this was not intended; and evidently it never occurred to the Legislature of New York that the construction here contended for could possibly be placed upon the Act of Congress.

This would all be true even if the publication of the thirty copies charged in the indictment were of itself an act beyond the jurisdiction of the State courts, since the Act of Congress does no more than adopt the State law, and the latter provides but a single punishment for the entire publication, wherever taking place. *In fact, however, the State was competent to punish the publication of these thirty copies.* These copies "the defendant delivered and caused to be delivered" within the Federal territory (pp. 86-7). The papers were put in circulation and circulated therefrom (from the defendant's printing office) throughout the United States" (p. 87). It is clear that the defendant delivered these copies of the paper, in the jurisdiction of the State of New York, to an agent or messenger, with intent that they be delivered to the purchaser, either through

the mails or otherwise. This, beyond question, was a publication of the alleged libel within the jurisdiction of the State of New York.

> "To sustain a charge of publishing a libel, it is not necessary that the matter complained of should have been seen by another. It is enough that the defendant knowingly displayed it, *or parted with its immediate custody*, under circumstances which exposed it to be seen or understood by another person than himself" (N. Y. Penal Code, Sec. 245; N. Y. Penal Law, Sec. 1343).

And such is the common law:

> Rex *v.* Barnett, 4 Barn. & Ald., 95, 126;
> Youmans *v.* Smith, 153 N. Y., 214, 218-19;
> Commonwealth *v.* Dorrance, 14 Phila. Rep., 671, 672;
> Callan *v.* Gaylord, 3 Watts, 321, 324.

It is thus apparent that the Act of Congress, as construed by the Government, creates, at the very least, a concurrent jurisdiction, in the Federal courts to punish a specific act or series of acts which are fully within the jurisdiction of the State; and such an intention, as we have shown, was never entertained by the law-making body. In fact, it does more. By isolating this trivial portion of the act of publication, and creating out of it an independent crime, Congress would run counter to the policy of the State and to its theory of the law of libel. It would give to the "offense committed" in Federal territory an accumulation of punishments, instead of the one accorded to it by the law of the State, in spite of the expressed purpose to the contrary. In substance it would create a new offense,—one not known to the State law.

We thus earnestly contend that, when the Act of Congress which is relied upon is analyzed, it appears

that the acts which form the basis of this prosecution are not embraced within its provisions. The main proposition advanced for the Government is simply that the gist of the crime of libel is the *publication*, and that it is perfectly competent for any independent jurisdiction to punish the circulation of a libel within its borders, although it originates elsewhere. We have no disposition to dispute this proposition, which is certainly supported by authority.

Commonwealth *v.* Blanding, 3 Pick., 304;

Haskell *v.* Bailey, 63 Fed. Rep., 873, 875.

It does not, however, in any way meet the foregoing argument. Even if Congress had the power to punish, as an independent crime, the publication of libelous matter in Federal territory, under the circumstances disclosed in the case at bar, it did not in fact attempt to do any such thing. On the contrary, it adopted, as to such acts, the legal policy of the State of New York; and that policy prohibits their punishment by the Federal Government at all. This is the necessary inference to be drawn from the language of the Act.

CONCLUSION.

The judgment of the Circuit Court should be affirmed.

Respectfully submitted,

DELANCEY NICOLL,
JOHN D. LINDSAY,
RAYMOND D. THURBER,
Of Counsel.

FILED
OCT 24 1910
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States,

OCTOBER TERM, 1910.

No. 541.

THE UNITED STATES, *Plaintiff in Error*,

vs.

PRESS PUBLISHING COMPANY.

SUPPLEMENTAL BRIEF FOR THE DEFENDANT IN ERROR ON THE QUESTION OF THIS COURT'S POWER TO REVIEW THE JUDGMENT OF THE CIRCUIT COURT.

DE LANCEY NICOLL,
JOHN D. LINDSAY,
Of Counsel.

THE EVENING POST JOB PRINTING OFFICE, 156 FULTON ST., N. Y.

Supreme Court of the United States,

OCTOBER TERM, 1910.

No. 541.

THE UNITED STATES, Plaintiff in Error,

vs.

PRESS PUBLISHING COMPANY.

SUPPLEMENTAL BRIEF FOR THE DEFENDANT IN ERROR.

FIRST.—The Circuit Court properly entertained and passed upon the motion to quash on the trial.

1. When an indictment cannot be proceeded with "advantageously to public justice," or without inflicting an unnecessary wrong upon the defendant, the trial judge may, in his discretion, quash it, or "in other words, cause it to abate."

1 Bishop's New Cr. Proc., Sec. 759.

2. The motion to quash

> "is an appeal to the judicial discretion, wherein what seems to the judge just in the particular instance is regulated by rule."
>
> Bishop's New Crim. Proc., Vol. I, Sec. 761.

3. Although "the favored time" for the motion is before plea, still it may properly he heard

> "even during a trial, and even after the evidence is in; and, in short, it is in order, without any withdrawal of plea, at any time down to the rendition of the verdict."
>
> *Id.*, Sec. 762.

4. The trial judge may, in proper circumstances aid his direction

> "by looking into what is brought to his attention outside the indictment and even outside the record of the cause for which purpose the prosecuting attorney may admit a fact, or it may be shown by affidavit, and in either case it will, if of the due relevancy, be considered in connection with the indictment as foundation for the motion to quash."
>
> *Id.*, Sec. 763.

5. *Want of jurisdiction* is a "favored ground" for quashing the indictment.

Id., Sec. 772.

In Reg *v.* Heane, 9 Cox, Cr. C., 433, Cockburn, *C. J.*, said:

> "As regards the objection that the motion to quash cannot be made after plea pleaded, I think if it is made to appear clearly that there was no jurisdiction we have power to quash the indictment at any stage, and even for matter not apparent on the face of the indictment, brought to our notice by extraneous evidence upon affidavit."

See also

Justice *v.* State, 17 Ind., 56.
Bell *v.* Com., 8 Grat., 600.

SECOND.—This is not a moot case, since, should the judgment of the court below be reversed, the defendant may be placed on trial again.

A defendant is not in jeopardy until he has been legally convicted or acquitted by the verdict of a jury, unless the trial is terminated short of a ver-

dict by the fault of the prosecutor. Legal jeopardy does not arise if the jury are discharged before verdict, with the consent of the accused, express or implied. Such consent is implied when the discharge is the necessary result of a decision rendered upon his application, and for his benefit.

Cooly, Const. Lim. (7th Ed.), 468–70.
Story, Const., Sec. 1787.
Ex parte Lange, 18 Wall., 201.
United States *v.* Haskell, 4 Wash., 410.
United States *v.* Keen, 1 McLean, 429.
People *v.* Casborus, 13 Johnson, 351.
State *v.* Garvey, 42 Conn., 232.
Joy *v.* State, 14 Ind., 139.
Gerard *v.* People, 3 Scam. (Ill.), 362.
Peiffer *v.* Com, 15 Pa. St., 468.
State *v.* Davis, 80 N. C., 384.
State *v.* Spier, 1 Dev., 491.

See also

United States *v.* Ball, 163 U. S., 662, 672.
Jones *v.* United States, 31 Fed. Rep., 725.
Coleman *v.* Tennessee, 97 U. S., 509, 520–1.

Respectfully submitted,

DELANCEY NICOLL,
JOHN D. LINDSAY,
Of Counsel.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1910.

UNITED STATES *v.* PRESS PUBLISHING COMPANY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 541. Argued October 24, 1910.—Decided January 3, 1911.

The effect of § 2 of the act of July 7, 1898, c. 576, 30 Stat. 717, was to incorporate the criminal laws of the several States in force July 1, 1898, into the statute and make such criminal laws, to the extent of such incorporation, laws of the United States and applicable to the United States reservations within the States (*Franklin* v. *United States*, 216 U. S. 559), but the history of the act demonstrates that in its adoption, Congress sedulously considered the two-fold character of our constitutional government with the purpose of interfering as little as might be with the authority of the States, as to the subject-matter of the statute, over territory situated, except for the existence of a United States reservation, within state jurisdiction.

The purpose and intent leading to the adoption of an act affords a means for discerning the intent of a subsequent act relating to the same subject and superseding the earlier act.

Proceedings in Congress in the course of adoption of a statute and amending its form as originally proposed considered, in this case, in determining the purpose and scope of the act and the intent of Congress in adopting it.

The assimilative crimes act of 1898 cannot be used as a means for frustrating the laws of the State, within which a reservation of the United States is situated; and one accused of a crime consisting of several elements treated as a unit by the state law so that there can be but one trial and conviction thereunder cannot be indicted and tried in the United States court for a single separate element committed on such reservation, the other elements of the crime being committed in other portions of the State.

As the law of New York results in the unity as one criminal act of the publication of a libel and its circulation, allows but a single conviction for the combined act, and affords adequate means for punishing such circulation on a reservation of the United States within that State, resort cannot be had to the United States court, under § 2 of the act of July 7, 1898, to punish the act of such circulation on the basis that it is a separate and distinct offense from the publication.

On March 4, 1909, upon the assumed authority of the second section of an act of Congress approved July 7, 1898, c. 576, 30 Stat. 717, a grand jury in the Circuit Court of the United States for the Southern District of New York found a true bill against the Press Publishing Company, charging the commission of alleged criminal libels, set out in an indictment composed of fourteen counts. The asserted libels were contained in six issues of The World, a newspaper printed in the city of New York, of which newspaper the defendant in error, a New York corporation, was publisher. The first seven counts dealt with the publication of the libels by circulating copies of the newspaper containing the same within the reservation and military post in Orange County, N. Y., known as West Point. The remaining counts dealt with the publication of each of the libels by the delivery of a copy of the issue of The World containing the same to a post office inspector at his office in the Post Office Building in the city of New York. Both West Point and the Post Office Building were averred to be places within the exclusive jurisdiction of the United States. Those who were alleged in each count to have been criminally libeled were at the

time of the publications the President of the United States, the Secretary of War and certain private individuals. The alleged libelous articles related to the purchase by the United States of the Panama Canal. We need not state the contents of the articles, since in the view taken of the case we shall be only called upon to determine whether, conceding the publications to have been libelous as charged in the indictment, they constituted offenses against the United States within the purview of the act of 1898.

The case went to trial upon a plea of not guilty. The circulation of the newspapers containing the alleged libels on the military reservation and their delivery to the inspector at the post office as charged in the indictment was admitted by the defendant. The Government on the other hand admitted that all of the issues of The World newspaper referred to in the indictment were printed in the defendant's printing establishment in the city of New York and were circulated therefrom.

At the close of the evidence introduced by the Government the defendant moved to quash the indictment or to instruct a verdict of acquittal, upon the following grounds:

"First. The court has no jurisdiction in this case because there is no statute of the United States authorizing the prosecution.

"Second. The act of 1898 does not apply to the case as disclosed by the evidence.

"Third. If construed so as to cover the acts shown by the evidence, the act is unconstitutional.

"Fourth. The offense, if any, was committed wholly within the jurisdiction of the State of New York and was punishable there.

"Fifth. The defendant being a corporation is incapable of committing the offense charged in the indictment."

The court announced that it had concluded that the indictment was not authorized by the act of 1898, and therefore the motion to quash would be sustained. Be-

fore, however, any formal entry to that effect was made, in order to obviate any question of double jeopardy, upon motion of the attorney for the United States a juror was withdrawn, and thereafter a judgment was duly entered quashing the indictment, it being expressly recited in the judgment that it was based upon a construction of the statute. To review the action of the trial court this writ of error is prosecuted by the United States, under the authority of the act of March 2, 1907, c. 2564, 34 Stat. 1246.

Mr. James C. McReynolds, Special Assistant to the Attorney General, with whom *The Attorney General* and *Mr. Stuart McNamara*, Special Assistant to the Attorney General, were on the brief, for the United States:

For history and interpretation of the assimilative statute act of July 7, 1898, see first Federal crimes act of April 30, 1790; first assimilative statute of March 3, 1825, 4 Stat. 115, prepared by Justice Story, and construed in *United States* v. *Paul*, 6 Pet. 141, to the effect that "the laws of the State" were only those in force March 3, 1825; second assimilative statute of April 5, 1866, c. 24, 14 Stat. 13; § 5391, Rev. Stat.; act of 1898, 30 Stat. 717, and of March 4, 1909, c. 321, 35 Stat. 1145; see also *Franklin* v. *United States*, 216 U. S. 559.

A post office is "a place" within the meaning of the act of 1898. *United States* v. *Andem*, 158 Fed. Rep. 996; *United States* v. *Tucker*, 122 Fed. Rep. 518; *Sharon* v. *Hill*, 24 Fed. Rep. 726, 731.

As to what constituted criminal libel under the New York statutes in 1898, see New York Penal Code of 1881, §§ 242–251. Except as thereby modified the general rule of the common law as to the place where one may be prosecuted for libel prevails in New York.

The crime of libel does not consist in the mere composition of the article, or the physical production of the paper, but in exposing or publishing the defamatory matter to

the community. 2 Roscoe, Crim. Ev. 890, 897; Wharton, Crim. Law, 8th ed., 1618; 2 Bishop, Crim. Law, 6th ed., 905, 949; Townsend, Slander and Libel, 3d ed., 144.

One who writes a libel in one county with intent to publish and who afterwards publishes it in another may be indicted in both. 18 Am. & Eng. Ency. of Law, 1119, and cases cited; *Commonwealth* v. *Blanding*, 3 Pick. 304, approved in the *Palliser Case*, 136 U. S. 257, 266; and see *In re Cook*, 49 Fed. Rep. 833; *Armour Packing Co.* v. *United States*, 153 Fed. Rep. 1, 5; *Commonwealth* v. *Macloon*, 101 Massachusetts, 1; *Commonwealth* v. *Pettes*, 114 Massachusetts, 307, 311; *In re Dana*, 7 Ben. 1; *In re Buell*, 3 Dill. 116; *Haskell* v. *Bailey*, 25 U. S. App. 99; *State* v. *Kountz*, 12 Mo. App. 511; *Burton* v. *United States*, 202 U. S. 344, 388.

The act of July 7, 1898, applies to a libel circulated in West Point or the Post Office Building, although printed outside. The same act or series of acts may constitute an offense equally against the United States and the State, subjecting the guilty party to punishment under the laws of each government. *Cross* v. *North Carolina*, 132 U. S. 131, 139.

West Point and the Post Office Building are places over which the United States has exclusive jurisdiction within the terms of § 2 of the act of 1898. The Constitution gives Congress plenary legislative power over such places. Offenses committed therein are against the National sovereignty.

The court below cited no direct authority and there is none to support its position. At different times Congress has passed assimilative acts without attempting to except libel from their general terms. The last was approved on March 4, 1909. On the other hand, it has distinctly recognized that all crimes were intended to be included therein.

The defense that because the offense charged may be punished in New York and therefore was not intended to

be included in the act of 1898 is without merit; the State of New York cannot punish an offense committed at West Point against the United States. Such offense must be punished as here attempted, or be "dispunishable." *United States* v. *Davis*, 5 Mason, 356.

Mr. Delancey Nicoll, with whom *Mr. John D. Lindsay* and *Mr. Raymond D. Thurber* were on the brief, for defendant in error:

The Circuit Court properly entertained and passed upon the motion to quash on the trial. 1 Bishop's New Cr. Proc., § 759; *Reg.* v. *Heane*, 9 Cox, Cr. C. 433; *Justice* v. *State*, 17 Indiana, 56; *Bell* v. *Commonwealth*, 8 Gratt. 600.

This is not a moot case, since, should the judgment of the court below be reversed, the defendant may be placed on trial again.

Even though the language of the act of July 7, 1898 were literally broad enough to cover the case at bar, it should not be so construed. If there be any fair doubt whether the statute embraces it, that doubt is to be resolved in favor of the accused. *United States* v. *Clayton*, 2 Dill. 219; *United States* v. *Reese*, 5 Dill. 405, 414; *United States* v. *Whittier*, 5 Dill. 35; *United States* v. *Sheldon*, 2 Wheat. 119; *United States* v. *Wiltberger*, 5 Wheat. 76; *United States* v. *Garretson*, 42 Fed. Rep. 22, 25.

The general acquiescence of legal minds for nearly a century in the negative of the proposition, now asserted for the first time by the Government, forbids the interpretation of the statute in accordance with that proposition. *United States* v. *Hudson*, 7 Cranch, 32.

A literal construction of the statute would lead to injustice, oppression and absurd consequences. *United States* v. *Kirby*, 7 Wall. 482, 486.

According to the theory of the Government, the publication of a single newspaper article might constitute as many

distinct crimes as there are places under the jurisdiction of the United States, in the whole country. It would thus be possible to crush an owner or editor, under an intolerable burden of crime. Such a construction will not be put upon the act if it can be avoided, for it contravenes the fundamental principle of criminal jurisprudence that crime is not divisible. Wharton, Crim. Law., 10th ed., § 27; *State* v. *Commissioners*, 2 Murphy (N. C.), 371; *State* v. *Cooper*, 13 N. J. L. 361, 375.

The constitutional objection is also grave, for such a law does, in substance, abridge the liberty of speech and of the press,—that is, if to abridge such liberty means to so curtail it that no owner or editor of a paper could with safety freely discuss public affairs.

The construction contended for by the Government is not only unnecessary to remedy the definite evil aimed at by Congress, but would create an evil which it was the intention of Congress to avoid. *United States* v. *Palmer*, 3 Wheat. 610, 630, 632; *Holy Trinity Church* v. *United States*, 143 U. S. 457.

As to history of the assimilative acts see 1 Life of Joseph Story, Boston, 1851, pp. 244, 293, 297; The American Nation, Hart, 1819–1829; "Reaction toward State Sovereignty", 299; Annals of Congress, 17th Cong., 2nd Sess. 1822–1823, 929; 1 Debates in Congress, Gales & Seaton, 1824–1825, 157, including debate of Mr. Wickliffe, of Kentucky, Daniel Wesbter and Mr. Barbour.

The whole history and life of the country condemn the construction asserted by the Government. This is shown by the history of the sedition law of July 14, 1798, 1 Stat. 596. See McMaster's Hist. of People of U. S. 397; Von Holst, Const. Hist. of U. S. 142; 3 Wilson, Hist. of Am. People, 167; 2 Curtis, Const. Hist. of U. S. 3; 7 Jefferson's Writings, Putnam ed., 267, 295, 309.

The offense charged in the indictment is not even within the letter of the statute.

MR. CHIEF JUSTICE WHITE, after making the foregoing statement, delivered the opinion of the court.

As we have stated, the indictment was based on the act of July 7, 1898, 30 Stat. 717, § 2. The effect of the act, as pointed out in *Franklin* v. *United States*, 216 U. S. 559, 568–569, was to incorporate the criminal laws of the several States in force on July 1, 1898, into the statute and to make such criminal laws to the extent of such incorporation laws of the United States. The text of the second section of the act of 1898 is this:

"That when any offense is committed in any place, jurisdiction over which has been retained by the United States, or ceded to it by a State, or which has been purchased with the consent of a State for the erection of a fort, magazine, arsenal, dockyard, or other needful building or structure, the punishment for which offense is not provided for by any law of the United States, the person committing such offense shall upon conviction in a Circuit or District Court of the United States for the district in which the offense was committed, be liable to and receive the same punishment as the laws of the State in which such place is situated now provide for the like offense when committed within the jurisdiction of such State, and the said courts are hereby vested with jurisdiction for such purpose; and no subsequent repeal of any such state law shall affect any such prosecution. (30 Stat. 717.)"

As it is conceded that there is no statute of the United States expressly defining and punishing the crime of criminal libel when committed on a United States reservation, etc., it follows that in order to determine the correctness of the ruling of the court below we are called upon, *a*, to accurately fix the extent to which, by the effect of the act of 1898, the criminal laws of the States were incorporated therein so as to authorize the punishment of crimes

defined by such laws as offenses against the United States, and, *b*, this being done to make an analysis of the criminal laws of the State of New York to ascertain whether the particular offenses here charged were made punishable by those laws, and if so, whether by virtue of the act of 1898 they constituted offenses against the laws of the United States punishable in the courts of the United States.

It is certain, on the face of the quoted section, that it exclusively relates to offenses committed on United States reservations, etc., which are "not provided for by any law of the United States," and that as to such offenses the state law, when they are by that law defined and punished, is adopted and made applicable. That is to say, while the statute leaves no doubt where acts are done on reservations which are expressly prohibited and punished as crimes by a law of the United States, that law is dominant and controlling, yet, on the other hand, where no law of the United States has expressly provided for the punishment of offenses committed on reservations, all acts done on such reservations which are made criminal by the laws of the several States are left to be punished under the applicable state statutes. When these results of the statute are borne in mind it becomes manifest that Congress, in adopting it, sedulously considered the two-fold character of our constitutional government, and had in view the enlightened purpose, so far as the punishment of crime was concerned, to interfere as little as might be with the authority of the States on that subject over all territory situated within their exterior boundaries, and which hence would be subject to exclusive state jurisdiction but for the existence of a United States reservation. In accomplishing these purposes it is apparent that the statute, instead of fixing by its own terms the punishment for crimes committed on such reservations which were not previously provided for by a law of the United

States, adopted and wrote in the state law, with the single difference that the offense, although punished as an offense against the United States, was nevertheless punishable only in the way and to the extent that it would have been punishable if the territory embraced by the reservation remained subject to the jurisdiction of the State. While this meaning, we think, stands out in bold relief from the text of the section, the correctness of such meaning will be nevertheless readily demonstrated, even if, for the sake of argument, it be conceded that the text is ambiguous. We say this because a consideration of the genesis and development of the legislation which the act of 1898 embodies will leave no doubt that the construction we have given to the act enforces the exclusive and only purpose intended to be accomplished by its adoption.

It is undoubted, as pointed out in *Franklin* v. *United States*, *supra*, that the forerunner of the act of 1898 was the act of March 3, 1825 (ch. 65, 4 Stat. 115), since the act of 1898 is virtually a repetition of the act of 1825, except as to provisions plainly inserted merely for the purpose of bringing under the sway of the act United States reservations which on account of the restrictive terms of the act of 1825 were not embraced within the sphere of its operations. The act of 1825 was entitled "An act more effectually to provide for the punishment of certain crimes against the United States and for other purposes." Sections 1 and 2 of the act provided for the punishment of arson when committed within any fort, dockyard and other enumerated places, "the site whereof is ceded to, and under the jurisdiction of, the United States." The third section was as follows:

"SEC. 3. *And be it further enacted*, That if any offense shall be committed in any of the places aforesaid, the punishment of which offense is not especially provided for by any law of the United States, such offense shall, upon a conviction in any court of the United States having

cognizance thereof, be liable to, and receive the same punishment as the laws of the State in which such fort, dockyard, navy-yard, arsenal, armory, or magazine, or other place, ceded as aforesaid, is situated, provide for the like offense when committed within the body of any county of such State."

This section came under consideration in *United States* v. *Paul*, 6 Pet. 141, and it was held that its provisions referred only to the laws of the States existing at the time of the passage of the act, that is, those which were in force on March 3, 1825. It came also to pass that in considering the words "whereof is ceded" in the first section it was held that those words limited the operation of the act to places which had been ceded to the United States prior to the enactment of the act of 1825. *State* v. *Barney*, 5 Blatch. 294.

By the second section of the act of April 5, 1866 (ch. 24, 14 Stat. 13), Congress substantially reënacted the third section of the act of 1825, changing, however, its phraseology so as to cause its provisions to apply not only, as did the act of 1825, to a place ceded to the United States, but to "any place which has been or shall hereafter be ceded." As thus adopted the act passed into the Revised Statutes as § 5391 and continued in force until the passage of the act of 1898, which, it will be at once observed, makes no substantial change concerning the fundamental scope and purpose of the prior statute, since it simply enlarged the extent of its operation by causing the statute not only to embrace reservations which had been ceded to the United States, but those which had been carved out of the public domain.

If then the purpose and intent which led to the enactment of the act of 1825 can be discovered and made plain it must clearly result, as that act was but the precursor of the act of 1898, that the light generated by the original intent and purpose will afford an efficacious means for dis-

cerning the intent and purpose of the act of 1898. The basis of the third section of the act of 1825 was the eleventh section of a bill drawn by Mr. Justice Story, and of such eleventh section its author said (Life of Justice Story, Boston, 1851, vol. 1, p. 293):

"This is the most important section of the whole bill. The criminal code of the United States is singularly defective and inefficient. . . . Few, very few, of the practical crimes (if I may so say) are now punishable by statutes, and if the courts have no general common law jurisdiction (which is a vexed question), they are wholly dispunishable. The state courts have no jurisdiction of crimes committed on the high seas, or in places ceded to the United States. Rapes, arsons, batteries, and a host of other crimes may in these places be now committed with impunity. Suppose a conspiracy to commit treason in any of these places, by civil persons, how can the crime be punished? These are cases where the United States have an exclusive local jurisdiction. And can it be less fit that the Government should have power to protect itself in all other places where it exercises a legitimate authority? That Congress has power to provide for all crimes against the United States is incontestible."

It is certain that the fundamental purpose thus contemplated by Mr. Justice Story was not overlooked or intended to be departed from by the writer of the act of 1825. There can be no doubt on this subject, in view of the fact that Mr. Webster, the author of that act, in referring to the third section of the bill by him drafted and reported to Congress, (which section, as we have said, was based upon the eleventh section of the bill drawn by Mr. Justice Story), said:

" 'As to the third section, it must be obvious that, where the jurisdiction of a small place, containing only a few hundreds of people (a navy yard, for instance), was ceded to the United States, some provision was required

for the punishment of offenses; and as, from the use to which the place was to be put, some crimes were likely to be more frequently committed than others, the committee had thought it sufficient to provide for these, and then to leave the residue to be punished by the laws of the State in which the yard, &c., might be. He was persuaded that the people would not view it as any hardship that the great class of minor offenses should continue to be punished in the same manner as they had been before the cession.' (*Id.* 338.)"

The demonstration of the purpose and scope of the act of 1825 is, if possible, made clearer by an amendment to which the act was subjected before it reached its final legislative form. As originally reported the fourth section provided for the punishment of certain designated crimes by the law of the United States when committed "upon the sea, or in any arm of the sea or in any river, haven, creek, basin, or bay, within the admiralty and maritime jurisdiction of the United States." But this provision was qualified in the passage of the bill, by the adoption of an amendment which added the words, "and out of the jurisdiction of any particular State." This amendment as finally adopted was the result in a somewhat modified form of a prior amendment offered by Mr. Wickliffe of Kentucky. Its meaning is not left to doubt, since Mr. Wickliffe in urging the adoption of the amendment expressly stated that it was "intended to prevent collisions between the authority of the General and State Governments. . . . He conceived the State Governments to be entirely competent to inquire into and punish crimes committed within their own jurisdictions, and that, as there was no necessity, there would be no advantage, in giving the United States concurrent power to do the same." Register of Debates in Congress, Gales & Seaton, 1824–1825, vol. 1, p. 154; *Id.*, pp. 157, 165–166, 166–167, 168, 335, 335*h*, 338.

Having fixed the meaning of the act of 1898, and, as heretofore stated, there being no law of the United States specifically punishing the offense of criminal libel when committed on a reservation, etc., of the United States, it remains only to determine whether, applying the law of the State of New York, in accordance with the act of 1898, there was power in the grand jury to present the indictment here under consideration or authority in the courts of the United States to entertain jurisdiction thereof as charging a substantive and distinct offense under the laws of the United States. That is to say, was the indictment found below consistent with the application of the state law in accordance with the provisions of the act of 1898?

The provisions of the penal code of New York on the subject of criminal libel at the date mentioned were as follows (Laws of New York, 1881, vol. 3, chap. 8):

"SEC. 243. A person who publishes a libel is guilty of a misdemeanor.

"SEC. 245. To sustain a charge of publishing a libel, it is not necessary that the matter complained of should have been seen by another. It is enough that the defendant knowingly displayed it, or parted with its immediate custody, under circumstances which exposed it to be seen or understood by another person than himself."

Sections 249 and 250, in substance, provided that where a person libeled is a resident of the State the prosecution shall be either in the county of such residence or the county where the paper is published, and that where the person libeled is a non-resident the prosecution shall be in the county in which the paper, on its face, purports to be published, or, if it does not so indicate, in any county in which it was circulated.

"SEC. 251. A person cannot be indicted or tried for the publication of the same libel, against the same person, in more than one county."

Section 138 of the Code of Criminal Procedure (Laws of New York, 1881, vol. 2, p. 43) contains similar provisions as to the place for the prosecution of a libel, and the immunity from liability to prosecution in more than one county. It was further provided:

"SEC. 139. When an act charged as a crime is within the jurisdiction of another state, territory or county, as well as within the jurisdiction of this state, a conviction or acquittal thereof in the former, is a bar to a prosecution or indictment therefor in this state.

"SEC. 140. When a crime is within the jurisdiction of two or more counties of this state, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment thereof in another."

In view of the unity between the act of composing and the primary publication of a newspaper containing a libelous article within the State of New York, and of subsequent publications or repetitions thereof by the publisher of the newspaper which are clearly the resultant of the provisions of the laws of New York above quoted and referred to, two propositions are, we think, plainly established: First, that adequate means were afforded for punishing the circulation of the libel on a United States reservation by the state law and in the state courts without the necessity of resorting to the courts of the United States for redress. Second, that resort could not be had to the courts of the United States to punish the act of publishing a newspaper libel by circulating a copy of the newspaper on the reservation upon the theory that such publication was an independent offense, separate and distinct from the primary printing and publishing of the libelous article within the State of New York, without disregarding the laws of that State and frustrating the plain purpose of such law, which was that there should be but a single prosecution and conviction.

These propositions being true, it follows in the light

of the construction which we have given the act of 1898 that the court below was right in quashing the indictment as not authorized by that act. No other conclusion we think was possible, as the court could not have sustained the indictment without giving to the statute a meaning directly conflicting with the construction which we have affixed to it. In other words, the court could not have upheld the indictment without deciding that because the statute provided that acts when committed on United States reservations, which were not expressly made criminal by a law of the United States, might be prosecuted and punished in accordance with the state law, therefore a prosecution was authorized which was inconsistent with that law and in disregard thereof. And, further, albeit that Congress having regard for the autonomy of the States had deemed it best not to treat reservations within States as foreign to the States for the purpose of punishing crime unless expressly provided to the contrary, nevertheless the legislation enacted by Congress for this purpose had destroyed the end contemplated, since that legislation when rightly construed, while applying the state legislation to crimes committed on a reservation as if the territory was not foreign but domestic, at the same time exacted that the state law when thus applied should be enforced as if the territory was in no respects for the purpose domestic, but on the contrary was wholly foreign. The contradiction and confusion to which the contention thus reduces itself is too apparent to require anything but statement. Indeed, we think the misconception just pointed out lies at the basis of all the propositions so ably pressed at bar to secure a reversal, since they all depend upon a construction of the act of 1898, which we hold to be wrong. Great therefore as might otherwise be their potency with the foundation gone upon which they rest, all come to this, that the statute sanctions that which it by necessary implication prohibits, and, moreover, destroys the great public

purpose which its adoption was intended to foster and protect.

The ruling which we now make does not of course extend to a subject which is not before us. It follows, therefore, that we do not now intimate that the rule which in this case has controlled our decision would be applicable to a case where an indictment was found in a court of the United States for a crime which was wholly committed on a reservation, disconnected with acts committed within the jurisdiction of the State, and where the prosecution for such crime in the courts of the United States instead of being in conflict with the applicable state law was in all respects in harmony therewith.

Affirmed.